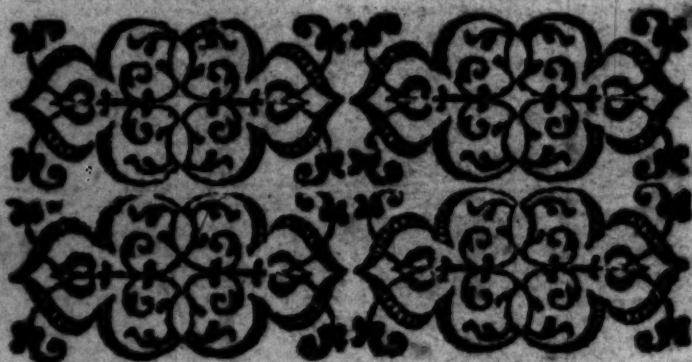


THE

Dialogue in English, be-
tweene a Doctor of Diuinitie,
and a Student in the Lawes of
England, Newlie corrected and
Imprinted, with new
Additions.

Author *P. Ieremya.*

L. Gilly



Imprinted at London in
Flectestrete, within Temple Barre
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Richard Tottill.

1593.

Cum Priuilegio.

THE

Dialogue in English

between a Doctor of Divinity

and a Student in the Lawes of

England: Wherein are contained

Imprompted with new

Additions

By J. W. G.



Printed at London in

Electricity within Temple-Barre

at the Signe of the Hand and Starre

Richard Tonill

1793.

Cur. Principio.

*The first Dialogue in Eng-
lish, betwixt a Doctor of Diuinity,
and a Student in the Lawes of England, of
the groundes of the said Lawes, and
of conscience, newly corrected, and
estones imprinted with
new Additions.*

The Introduction.



Doctor of Diuinitie that was
of great acquaintance and fa-
miliaritie with a Student in
the lawes of Englande, sayd
thus vnto him, I haue had
great desire of long time to
knowe whereupon the lawe
of England is grounded, but
because the most part of the

Lawe of England is written in the French tongue,
therefore I cannot through mine owne studie at-
taine to the knowledge thereof: for in that tongue I
am nothing expert. And because I haue alwaies found
thee a faithfull friend to me in all my busineses, there-
fore I am bolde to come to thee before any other to
knowe thy minde, what be the verie groundes of the
lawe of England as thou thinkest.

Student. That woulde aske a great leasure, and it
also aboue my cunning to doo it. Neuerthelesse,
that thou shalt not thinke that I would wilfully re-
use to fulfill thy desire: I shall with good will doo

A. ij.

that

The first Chapter.

that in me is to satisfie thy minde : But I pray thee that thou wilt first shew me somewhat of other laws that pertain most to this matter , and that Doctours treat of, howe lawes haue begunne, And then I will gladly shew thee as me thinketh what be the grounds of the law of England. *Doct.* I will with good will doo as thou sayest : VWherefore thou shalt vnderstand that Doctours treat of fower lawes, the which (as me seemeth) pertaine most to this matter. The first is the *Law eternal*. The second is the *Law of nature* of reasonable creatures, the which as I haue heard say, is called by them that be learned in the Law of Eng-lande, the *Law of reason*. The third is the *Law of God*. The fourth is, the *Law of man*. And therefore I will first treat of the Law eternal.

Of the Law eternall.

Cap. 1.

LIke as there is in euerie artificer a reason of such like things as are to be made by his crafte : so likewise it behoueth that in euerie gouernour there be reason and a foresight, in the governing of such things as shall be ordered & done by him, to them that he hath the gouernance of. And forasmuch as almightie God is creator & maker of al creatures, to the which he is copared as a workman to his works: And is also the gouernour of al deeds & movings that be found in any creature: Therefore as the reason of the wisdom of God (in asmuch as creatures be created by him) is the reason & foresight

The first Chapter.

3

light of all craftes and workes that haue bene
or shalbe, is the reason of the wisdom of God
mouing all things by wisdom made to a good
end, obtaineth the name & reason of a lawe, and
that is called the Law eternall.

And this lawe eternall is called the first law,
& it is wel called the first, for it was before al
other lawes, and all other lawes be deriued of
it, wherupon Saint Augustine saith in his
first booke of Free arbitrement, that in Temporall
Lawes, nothing is righteous ne lawfull, but that
the people haue deriued to them out of the lawe eter-
nall: Wherefore every man hath right and ti-
tle to haue that he hath righteously, of y right
wise iudgement of the first reason, which is
the lawe eternall. Scu. But how may this lawe
eternal be knowne? for as the Apostle writeth
in the fift Chapter of his first Epistle to the
Corinthians, *Qua sunt dei nemo scit, nisi spiritus dei*, That
is to say, no man knoweth what is in God,
but the spirit of God: wherefore it seemeth
that he openeth his mouth against heauē, that
attempeth to knowe it. Doct. This Lawe e-
ternal no man may know as it is in it self, but
onely blessed soules that see God face to face.
But almighty God of his goodnes sheweth of
it as much to his creatures as is necessarie for
thē, for els God should bind his creatures to
a thing impossible: which may in no wise be
thought in him. Therefore it is to be understood
that .i. maner waies almighty god maketh this
lawe eternal knowē to his creatures reasonable.
First, by the light of natural reaso. Secōd, by
heauēly reuelation. Thirdly, by the order of a

A.ij.

Prince

The first Chapter.

Prince or any other secondary gouernor that hath power to bind his subiects to a law.

And when the law eternal or the will of God is known to his creatures reasonable by the light of natural vnderstanding, or by the light of natural reason, that it is called the law of reason. And when it is shewed by heavenly reuelation in such maner as hereafter shall appere, then it is called the law of God. And when it is shewed vnto him by the order of a Prince or of any other secondary gouernour that hath a power to set a law vpon his subiects, then it is called the law of man, though originally it be made of God. For lawes made by man that hath receyued thereto power of God, be made by God. Therefore the said three lawes that is to say, the law of reason, the law of God, & the law of man, the which haue several names after the maner as they be shewed to man, be called in God, one law eternal.

And this is the law of which it is writtē Prouerbiorum octauo, where it is said, Per me reges regnant, & legum conditores iusta discernunt. That is to say, by my kings raigne, & makers of lawes discerne the trouth. And this suffiseth for this time of the law eternal.

¶ Of the lawe of reason, the which by doctors is called the lawe of nature of reasonable creatures.

Cap. 2.

First it is to be vnderstand, that the lawe of nature may be considered in two maners,

The second Chapter.

4

ners, that is to say : generally and specially : when it is considered generally, then it is referred to al creatures, aswell reasonable as vnreasonable, for al vnreasonable creatures liue vnder a certaine rule to them giuen by nature necessary for them to the conseruation of their being, but of this law it is not our entent to treat at this time. The lawe of nature specially considered : which is also called the lawe of reason, pertaineth onely to creatures reasonable, that is man, which is created to the ymage of God.

And this lawe ought to be kept aswell among Jewes, and Gentiles, as among Christian men. And this lawe is alway good and righteous, stirring & enclyning a man to good, and abhorring euill: and as to the ordering of the deeds of man it is preferred before the law of God. And it is wrytten in the hart of euery man teaching him what is to be done, and what is to be fled. And because it is wrytten in the hart, therefore it may not be put away, ne it is neuer changeable by no diuersitie of place ne time. And therefore against this law, prescription, statute, nor custome, may not preuaile. And if any be brought in against it, they be no prescriptions, Statutes nor Customes, but things void and against Justice. And all other lawes, aswell the lawes of God as to the acts of men, as other bee grounded thereupon.

Scu. Sith the law of reason is wrytten in the hart of euery man, as thou hast said before, teaching him what is to be done, & what is to be

The second Chapter.

be fled, and the which thou saiest may neuer be put out of the hart, what needeth it then to haue anie other Law brought in to order the acts and deeds of the people?

D. Though the law of Reason may not be changed nor wholly put away, Neuerthelesse befoze the law wzitten it was greatly let and blinded by euill customes and by many sinnes of the people, beside our originall sinne. Inso- much that it might hardly be discerned what was righteous and what vnrightheous, and what was good and what euill. Wherefoze it is necessarie for the good order of the people, to haue many things added to the Law of Reason, aswell by the Church, as by secular Prin- ces, accordinge to the manners of the countrie and of the people, where such additions should be exercised. And this law of reason differeth from the Law of God in two maners. For the law of God is giuen by reuelation of God, and this Law is giuen by a naturall light of vnderstanding. And also the Law of God ordereth a man of it selfe by a nigh way to the felicitie that euer shal endure. And the law of reason ordereth a man to y felicitie of this life.

Stu. But what be the thinges that the lawe of reason teacheth to be done, and what to be fled, I pray thee shew mee.

Doct. The law of reason teacheth that good is to be loued, and euil is to be fled. Also that thou shalt doe to another, that thou wouldest an other should doe to thee. And that we may doe nothing against truth. And that a man must liue peacefully with other. That Iu-
lice

The second Chapter. 5

Life is to be done to euerie man, and also that wrong is not to be done to any man.

And that also a trespasser is worthy to be punished and such other, of the which folloꝝ diuers other secundarie commaundements, the which be as necessarie conclusions deriued of of the first, As of that commaundement that good is to be beloued, it folloꝝeth that a man shall loue his benefactour: for a benefactour in that hee is a benefactour, includeth in him a reason of goodnesse, for els he ought not to be called a benefactour, that is to say, a good doer but an euil doer. And so in that he is a benefactour, he is to be beloued in all times, and in all places: And this lawe also suffereth many thinges to be done, as that it is lawfull to put away force with force. And that it is lawfull for euerie man to defend himselfe and his good against an vnlawfull power. And this lawe runneth with euery mans law, and also with the Law of God, as to the deeds of man, and must be alwaies kept and obserued, and shall alway declare what ought to folloꝝ by on the generall rules of the Law of man, and shal restraîne them if they be in any thing contrarie vnto it.

And here is to be vnderstoode, that after some men the Lawe whereby all things were in Common, was neuer of the Lawe of reason, but onely in the time of extreme necessitie. For they say that the Lawe of reason may not be chaunged, but they say it is euident that the Lawe whereby all things shoulde be in common is chaunged, wherefore

The third Chapter.

fore they conclude that was neuer the lawe of reason.

¶ Of the lawe of God.

Cap. 3.

The lawe of God is a certeine lawe giuen by reuelation to a reasonable creature shewing him the will of God, willing that creatures reasonable be bounde to do a thing or not to doe it, for obtaining of the felicitie eternall. And it is said for the obtaining of the felicitie eternal, to exclude the lawes shewed by reuelation of God for the politicall rule of the people, the which be called Iudicials. For a lawe is not properly called the lawe of God, because it was shewed by reuelation of God, but also because it directeth a man by the nearest way to the felicitie eternall, as beene the lawes of the olde Testament that beene called Moralles, and the lawes of the Euangelistes, the which were shewed in much more excellent manner, then the lawe of the olde Testament was: for that was shewed by the mediation of an Angell, But the lawe of the Euangelistes was shewed by the mediation of our Lord Iesu Christ God and man, and the lawe of god is alway righteous & iust, for it is made and giuen after the wil of God. And therefore al acts and deedes of man, be called righteous and iust when they be done according to the lawe of God and be conforinable to it. Also sometime a lawe made by man is called the lawe

lawe of God. As when a lawe taketh his principall ground vpon the lawe of **G O D**, and is made for the declaration or conseruation of the faith, and to put away heresies as diuers laws Cannons, & also diuers laws made by the comon people somtime doe. The which therefore are rather to be called the lawe of God then the lawe of man. Yet neuerthelesse, all the lawes Cannon bee not the lawes of God. For many of them be made onely for the politicall rule and conseruation of the people: Whereupon John Gerson in the treatise of the spirituall life of the soule, the second Lesson, and the third Canonically, saith thus. All the Cannons of Bishops nor their decrees be not the lawe of God. For many of them be made onely for the politicall conuersation of the people. And if any man will say: Be not all the goods of the Church spirituall, for they belong vnto the spirituality and leade to the spirituality? We aunswere: That in the whole politicall conuersation of the people, there be some specially deputed and dedicate to the seruice of God, the which most specially (as by an excellencie) are called spiritual men as religious men are. And other though they walke in the way of God, yet neuerthelesse, because their office is most specially to be occupied about such thinges as pertaine to the common wealth, and to the good order of the people, they be therefore called secular men or lay men. Neuerthelesse, the goods of the first may no more be called Spirituall, then the goods of the other, for they be things meere

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The third Chapter.

tempozall, and keeping the bodie as they doe in the other. And by like reason Lawes made for the politicall order of the Church, be called many times spiritual or the lawes of God. Neuerthelesse, it is but vnproperly. And other be called ciuil or the lawes of man. And in this point many be oft times deceiued, & also deceiue other, the which iudge the thinges to be spiritual, the which al men know be things tempozal and carnal. These be the wordes of Iohn Gerson in the place alleaged before. Furthermore, beside the law of reason and the law of man, it was necessary to haue the law of god for twower reasons.

The first, because man is ordeined to the end of the eternal felicitie, the which exceedeth the proportion and faculty of mans power. Therefore it was necessarie that beside the Lawe of reason and the law of man, he should be directed to his end by a law made of God.

Second, forasmuch as for the vncertaintie of mans iudgement, specially of things peculiar and seldome falling, it happeneth oft times to follow diuers iudgementes of diuers men, and diuersities of lawes, and therefore to the entent that a man without any doubt may know what he should do, and what he shoulde not do: It was necessarie that he should be directed in all his deeds by a law heavenly giuen by God, the which is so apparant that no man may swarue from it, as is the law of God.

Thirdly, man may onely make a law of such thinges as he may iudge vpon, and the iudgement of man may not be of inward thinges, but
onely

onely of outwarde thinges, and neuerthelesse it belongeth to perfection that a man be well ordred in both, that is to say, aswel in ward as outward. Therefore it was necessarie to haue the Lawe of God, the which shoulde order a man aswel of inwarde thinges as of outward thinges.

The fourth is, because as Saint Augustine saith in the first booke of free Arbitement, the law of man may not punish al offences: for if all offences shoulde be punished, the common wealth shoulde be hurt, as is of contracts. For it cannot be auoided, but that as long as contracts be suffered, many offences shall folowe thereby, and yet they be suffered for the common wealth. And therefore that no euill should be unpunished, it was necessarie to haue the law of God that should leaue no euil unpunished.

¶ Of the Law of man.

Cap. 4.

The law of man (the which sometime is called the law positue) is deriued by reaso, as a thing which is necessarily and probably following of the law of reason, and of the law of god. And that is called probable in y it appeareth to many, and specially to wise men, to be true. And therefore in euery law positue wel made, is somewhat of the law of reason, and of the law of God, And to discerne the Law of God & the law of reaso from the law positue, is very hard. And though it be hard, yet it is much

The fourth Chapter.

much necessarie in euerie moral doctrine, and in al lawes made for the common wealth. And that the law of man be iust and rightwise, two thinges be necessarie, that is to say: wisdom and Authozitie. Wisdom, that he may iudge after reason what is to done for the Communitie, and what is expedient for a peaceable conuersation and necessarie sustentation of them. Authozitie, that hee haue authozitie to make lawes. For the Law is deriued of Ligare, that is to say, to bind. But the sentence of a wise man doth not bind the Communitie, if he haue no rule ouer them. Also to euery good law be required these properties, that is to say, that it be honest, rightwise, possible in it selfe, and, after the custome of the countrie, conuenient for the place and time, necessarie, profitable and also manifest, that it be not captious by ante dark sentence, ne mixt with any priuate wealth, but all made for the common wealth. And after Saint Bridget in the fourth book in the hundred twentie nine Chapter, Euerie good Law is ordayned to the health of the soule, and to the fulfilling of the lawes of god, and to induce the people to flie euill desires and to do good workes. Also as the Cardinall of Camerer writeth, Whatsoever is righteous in the Law of Man, is righteous in the Law of god. For euerie mans law must be consonant to the Lawe of God. And therefore the Lawes of Princes, the Commandements of Prelats, the Statuts of communitie, ne yet the Ordinance of the Church is not righteous nor obligatoꝝ, but it be consonant to the law of god
And

And of such a lawe of man that is conso-
nant to the lawe of God, it appeareth who
hath right to landes and goods, and who not:
for whatsoeuer a man hath by such lawes of
man, he hath righteously. And whatsoeuer
is had against such lawes, is vnrigheteous-
lie had.

For lawes of man not contrarie to the lawe
of God, nor to the lawe of reason, must be ob-
serued in the law of the soule: and he that de-
spiseth them, despiseth God, and resisteth god.
And furthermore as Gratian saith, becaule eu-
il men feare to offend for feare of pain, Ther-
fore it was necessarie that diuers pains should
be ordeined for diuers offences, as Physicians
ordeined diuers remedies for seuerall diseases.
And such paines be ordeined by the makers of
lawes after the necessitie of the time, and af-
ter the disposition of the people. And though
that law that ordeined such pains hath there-
by a conformitie to the lawe of God (for the
lawe of God commaundeth that the people
shall take away euil from amonge them-
selues) yet they belong not so much to the
lawe of God, but that other paines (stan-
ding the first principles) might be ordeined and
appointed therefore that is the lawe that is
called most properly the lawe Positive, and the
law of man.

And the Philosopher sayd in the third booke
of his Ethikes, that the intent of a maker of a law
is to make the people good, and to bring them to
vertue. And though I haue somewhat in a
generall shewed the whereupon the lawe of
England

The fifth Chapter.

England is grounded. (For of necessitie it must be grounded of the said lawes, that is to say, of the law eternall, of the law of reason, & of the law of God.) Nevertheless, I pray thee shewe me moze specially whereupon it is grounded as thou thinkest, as thou before hast promised to do.

Sen. I will with good will do therein that lieth in mee, for thou hast shewed mee a right, plaine, and straight way thereto. Therefore thou shalt vnderstand that the law of England is grounded vpon vi. principal grounds. First it is grounded on the Lawe of reason, Seconde on the law of God. Thirdly, on diuers generall Customes of the Realme, Fourthly, of diuers Principles that be called Maximes, Fiftly, on diuers particular Customes. Sixtly, on diuers Statutes made in Parliaments by the king and by the Common Counsell of the Realme. Of which grounds I shal speake by order as they be rehearsed before, And first of the Lawe of reason.

¶ Of the first ground of the Lawe of England.

Cap. 5.

The first ground of the lawe of Englands is the Lawe of reason, wherof thou hast treated before in the second chapter, the which is kept in this Realme, as it is in all other realmes, & as of necessitie it must needes be (as thou hast layd before.) Do. But I would know what is called the law of Nature after the lawes of England,

The fifth Chapter.

England. St. It is not bled among them that be learned in the lawes of England to reason what thing is comaunded or prohibited by the law of nature, & what not, but al the reasoning in that behalf is vnder this maner, As whe any thing is grounded vpon the law of nature, they say, that reason wil y such a thing be don, & if it be prohibited by the law of nature, they say it is against reason, or that reason wil not suffer that to be done. Doct. Then I pray thee shewe mee what they that be learned in the lawes of the realme hold to be commaunded or prohibited by the lawe of nature, vnder such termes & after such maner as is bled amongst them that be learned in the said lawes.

St. There be put by the that be learned in the lawes of England two degrees of the lawe of Reason, that is to say, the law of Reason primary, & the law of Reason secundary, By the law of reason Primary be prohibited in the Lawes of Englad murther (that is the death of him that is innocent) periury, disceit, breaking of the peace, & many other like. And by the same law also it is lawfull for a man to defend himselfe against an vniust power so he keepe due circumstance. And also if any promise be made by man as to the body, it is by the law of Reason void in the lawes of England. The other is called the law of Secundary reason, the which is deuised into two branches, that is to say, into the lawes of a Secundary reason generall and into a lawe of Secundary reason particuler. The law of a secundary Reason generall is grounded and deriued of the generall Lawe, or generall custome

The 5. Chapter.

custome of propertie, wherby goods mouable & vn-mouable be brought into a certain propertie, so that euery man may knowe his owne thing. And by this braunch be prohibited in the lawes of England disseisions, trespassse in Lands & goods, rescusse, theft, vnlawful withholding of an other mans goods & such other. And by the same law it is a ground in the law of England that satisfaction must be made for a trespassse, and that restitution must be made of such goods as one man hath that belong to an other man, the debts must be paid, couenants fulfilled, and such other. And because disseisions, trespassse in lands and goods, theft, and other had not bin knowen, if the law of propertie had not bene ordeined: Therefore all thinges that be deriued by reason out of the said law of Property, be called the law of Reason secundary generall, for the law of Propertie is generally kept in al our countries.

The law of Reason secundary particuler, is the law that is deriued vpon diuers Customes generall and particuler, and of diuers Maximes and Statutes ordeined in this Realme. And it is called the lawe of Reason secundary particuler, because the reason in that case is deriued of such a Law that is only holden for Law in this Realme, and in none other realme.

Doct. I pray thee shew me some special case of such a law of Reason secundary particuler for an example. Stu. There is a law in England, which is a Law of Custome, that if a mā take a Distresse lawfully, that he shall put it in pounce ouert, there to remaine till he be satisfi-

fied

fied of that he distreined for. And then thereupon may be asked this question, that if the beasts die in pound for lack of meate, at whose perill die they, whether die they at the perill of him that distreined, or of him that oweth the beastes: D. If the lawe be as thou sayest and that a man for a iust cause taketh a distresse & putteth it in the pounce Quert, and no lawe compelleth him that distreineth to giue them meate, then it seemeth of reason that if the distresse die in pound for lacke of meate, that it died at the perill of him that oweth the beasts, and not of him that distreined, for in him that distreined there can be assigned no default, but in the other may be assigned a default, because the rent was vnpaid. Stu. Thou hast giuen a true iudgement, and who hath taught thee to do so, but reason deriued of the said generall custome. And the lawe is so full of such secundarie reasons deriued out of the generall Customes and Maximes of the realme, that some men haue affirmed that al the lawe of the realm, is the lawe of reason, But that cannot be proved as me seemeth, as I haue partly shewed before and more fully will shewe after. And it is not much bled in the lawes of England, to reason what Lawe is grounded vpon the Lawe of the first reason Primary, or of the Lawe of reason secundary, for they bee most commonly openly knowne of them selke, but for the knowledge of the Lawe of reason secundarie is greater difficultie, and therefore therein dependeth much the maner and forme of arguments in the Lawes of Englande.

B.ij.

And

And it is to be noted that all the deriuing of Reason in the lawes of England proceedeth of the first principals of the law or of some thing that is deriued of them: And therefore no man may right wisely iudge ne groundly reason in the lawes of England, if he be ignozant in the first principals, Also all birds, fowles, wilde beastes of forrests and warren, & such other be excepted by the lawes of England out of the said generall lawe & custome of property. For by the lawes of the realme no property may be of the in any person, vnlesse they be tame. Neuerthelesse the egges of Hawks, herons, or such other as build in the ground of any person be adiudged by the said lawes to belong to him that oweth the ground.

¶ Of the second ground of the law of England.

Cap. 6.

The second ground of the Law of England is þ Law of God, & therefore for punishmet of them that offend against the Law of God, it is enquired in many courts in this realme, if any hold any opinions secretly or in any other maner against the true catholik faith. And also if any general custome were directly against the law of God, or if any statute were made directly against it: as if it were ordeined that no almes should be giuen for no necessitie, the custome & statute were void. Neuertheles þ statute made in the xxij. yere of king Edward the third, whereby it is ordeined that no mā vnder pain of imprisonment shal giue any almesse to any baliat beg-

beggers that may well labour, that they may
 so be compelled to labour for their living, is a
 good statute, for it observeth the entent of the
 Law of God. And also by authoritie of this
 law there is a ground in the lawes of Eng-
 land, that he that is Accursed shal maintain no
 action in the kings court, except it be in verie
 few cases, so that the same excommunication be
 certified before the kings Justices in such ma-
 ner as the law of the Realme hath appointed.
 And by the authoritie also of this Ground, the
 law of England admitteth the spiritual iuris-
 diction of Dismes and offerings. And of all other
 things that of right belong vnto it, And recei-
 veth also al lawes of the Church duly made, &
 that exceed not the power of the that made the,
 Insomuch that in many cases it behoueth the
 kings Justices to iudge after the lawes of the
 church. Do. How may that be, that the kings
 Justices should iudge in the kings courts af-
 ter the law of the church: for it seemeth that y
 Church should rather give iudgement in such
 things as it may make lawes of, the the kings
 Justices. St. That may be done in many cases
 whereof I shal for an example put this case. If
 a writ of right of ward be brought of the body &c.
 And y tenat cōfessing the tenure, & the nonage
 of y infāt, saith, that the infant was married in
 his aūcesters daies &c. whereupon xij. men be
 swoyne which give this verdict, that the infāt
 was married in the life of his aūcestour, And
 that the woman in the life of his aūcestour
 sued a deuorice, whereupon sentēce was given
 that they shoulde be deuorced, And that the

The 6. Chapter.

heire appealed, which hangech yet vndiscussed
 praying the aide of the Justice to know whe-
 ther the infāt in this case shalbe said married or
 no. In this case if the law of the Church be p
 the said sentence of Divorce standeth in his
 strength & vertue vntill it be adnulled vpo the
 said appeale: That the infāt at the death of his
 auncelloz was vnmarrried because the first ma-
 riage was adnulled by that divorce. And if the
 law of the church be that the sentēce of the di-
 uorce stādeth not in effect til it be affirmed vpon
 the said appeale, then is the infant yet mar-
 ried, so that the value of his mariage cannot
 belong vnto the lord. And therfore in this case
 iudgement conditional shalbe giuē &c. And in
 likewise the kinges Justices in many other
 cases shal iudge after the lawe of the Church,
 like as p spiritual iudges must in many cases
 forme their iudgement after the kings lawes.
 D. How may that be, that the spiritual Jud-
 ges should iudge after the kings lawes, I pray
 thee shewe me some certaine case thereof. Stu.
 Though it be somewhat a digression from our
 first purpose, yet I will not withsay thy de-
 sire, but will with good will put thee a case or
 two thereof, p thou maiest the better perceiue
 what I meane. If A. & B. haue goods iointly
 and A. by his last will bequeth his portion
 therein to C. & maketh the said B. his Execu-
 tor & dyeth, & C. asketh the epecution of this
 will in the spiritual court: In this case p iud-
 ges there be bounde to iudge that will to bee
 void, because it is void by p lawes of the realm.
 And in likewise if a man be Outlawed, & after
 by

by his wil bequeth certaine goods to John at Stile, & make his executors & die, & king setteth the goods & after giueth them againe to his executors, & after John at Stile sueth a citation out of the spiritual court against the executors, to haue executiō of his will, In this case the iudges of the spiritual court must iudge his will to be void, as the law of the realme is that it is. And yet there is no such lawe of forfeiture of goods by outlary in the spiritual law.

¶ Of the third ground of the Law of England.

Cap. 7.

The third ground of the Lawe of England standeth vpon diuers General customes of old time vsed through al his realme, which haue bin accepted & approued by our Soueraigne Lord the king and his progenitours, and al his subiectes. And because the said customes be neither against the law of God, nor the lawe of reason, and haue bin alway taken to be good & necessarie for the common wealth of all the Realme: Therefore they haue obtained the strength of a law, insomuch that he that doth against them, doth against Justice. And these be the customes that properly be called the Common law. And it shall alway be determined by the Iustices whether there be any such generall custome or not, and not by xij. men. And of these generall customes and of certain principles that be called Maximes which also take effect by the old custome of the Realme, (as shall appeare in the Chapter next following) dependeth most part of the lawe of this Realme.

B. iij.

And

The 7. Chapter.

And therfore our soueraigne Lord the king at his coronation among other things taketh a solēpne Oth, that he shal cause all the customs of his Realme faithfully to be obserued. D. I pray thee shew me some of these generall Customs. Sr. I wil with good wil, & first I shal shew thee how the Custome of the Realme is the verie ground of diuers Courts in the Realme, that is to say, of the Chauncerie, of the kings bench, of the cōmon place, & the Eschequer, the which be Courts of recorde, because none may sit as iudges in these courts but by the kings letters patents. And these courtes haue diuers authorities, whereof it is not to treate at this time. Other courts there be also only grounded by the custōe of the realme, that be of much lesse authority then the courts before rehearsed, As in euery shire within the realme, there is a court that is called the Countie & an other that is called the Sherifes Corne, & in euery manor is a court that is called a court Baron. And to euery faire & market is incident a court that is called a court of Hipowders. And though in some statutes is made mention sometime of the said courts, yet neuerthelesse of the first institution of the said courts, & that such courts shoud be, there is no statute nor Lawe witten in the Lawes of Englande. And so all the ground & beginning of the said courts depend vpon the custome of the realme, the which custōe is of so high authority, that the said courtes ne their authorities may not be altered, ne their names chaunged without Parliament.

Also

Also by the old custome of the realme no man shalbe taken, imprisoned, disseised, nor otherwise destroyed, but he be put to answer by the law of the lād, & this Custome is confirmed by the statute of Magna charta Cap. 26.

Also by the old Custome of the realme all me great & smale shall do & receiue Justice in the kings Courts, & this custome is confirmed by the statute of Mar. cap. 1.

Also by the old custome of the realme, the eldest sonne is only heire to his auncestoz, and if there be no sonnes but daughters, then all the daughters shalbe heires, & so it is of sisters & other kinswome. And if there be neither sone, daughter, brother, nor sister, then shal the inheritance descend to the next kinsman oz kinswoman of the whole blood to him that had the inheritance of how many degrees soeuer they be from him. And if there be no heire generall nor special the lād shal eschete to the Lord of whom the land is holden.

Also by the old Custome of the realme, lāds shal neuer ascend, oz descend, from the sonne to the father oz mother, nor to any other auncestor in the right lyne, but it shal rather eschete to the Lord of the Fee.

Also if any Alien haue a sonne that is an Alien & after is made Denizen and hath another sonne and after purchaseth landes and dyeth, the yonger sonne shal inherite as heire & not the eldest.

Also if there be thre brethren & the middelst brother purchase landes and dyeth without heire of his body, the eldest brother shal inherite

as

Magna Charta

Heir

Died

Heir

Heir

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as heire to him, & not the yonger brother.

Also if land in fee simple discend to a man by the part of his father, & he dieth without heire of his body, then the inheritance shall discend to the next heire of the part of his father. And if there be no such heire of þ part of his father, then if the father purchased the lands, it shall go to the next heir of the fathers mother, & not to the next heire of the sonnes mother, but it shall rather eschete to the Lord of the fee, but if a man purchase lands to him & to his heires, & die without heire of his body, as is sayd before, then the land shall discend to the next heire of the part of his father if there be any, and if not, then to the next heire of the part of his mother.

Also the sonne purchaseth lands in fee & dieth without heire of his body, the land shall discend to his uncle, & shall not ascend to his father, but if the father haue a sonne though it be many yerres after the death of the elder brother, yet that sonne shall put out his uncle, & shall enjoy þ land as heir to his elder brother for ever.

Also by the Custome of the realme the childe that is bozne before espousels is bastarde, and shall not inherit.

Also the Custome of the realme is, that no manner of goods nor cattels real nor personal shall neuer go to the heire, but to the executors, or to the Ordinary or administratours. Also the husband shall haue all the chattels personals that his wife had at the time of the espousels or after, & also chattels real if he ouerliue his wife, but if he sel or giue away the chatels real

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Barlard.

Recreation.

als & die, by that sale or gift the interest of the
 wife is determined, & els they shall remaine to
 the wife if she ouerliue her husband, Also the
 husband shal haue al the inheritāce of his wife
 whereof he was seised in deede in the right of
 his wife during the espouseis in fee or in fee
 taile generall, for terme of life, if he haue any
 child by her to hold as tenāt by the curtesie of
 England, & the wife shall haue the third part
 of the inheritance of her husbāde whereof he
 was seised in deede or in law after the espouseis
 &c. but in that case the wife at the death of her
 husband must be of the age of ix. yere or aboue,
 or els she shall haue no dowry. D. What if the
 husband at his death be within the age of nine
 yeres? S. I suppose she shal yet haue her dowry.
 Also the old law & Custome of the realme is,
 that after the death of euery tenāt that holdeth
 his land by knights seruice, the Lord shal haue
 the sword & mariage of the heire, till the heire
 come to the age of xij. yeres, & if the heire in y
 case be of full age at the death of his auncestor,
 thē he shal pay to his Lord his relief, which at
 the Common law was not certaine, but by the
 statute of Mag. char. it is put in certein, that is
 to say, for euery whole knights fee to pay ℥. s.
 And for a whole Barony to pay a ℥. markes
 for reliefe, & for a whole Erelome to pay a ℥.
 li. and after the rate, And if the heire of such a
 tenant be a womā, & she at the death of her an-
 cestor be within the age of xiiij. yeres, then by
 the common law she should haue bin in ward
 only til 14. yere, but by the statute of Westmīn
 1. in such case she shal be in ward till xvi. yere.
 And

Partway

Dowry.

*Wardship
Marrage?*

Relief.

The 7. Chapter.

And if at the death of her ancelster she be of the age of 14. yere or above, she shalbe out of ward though the lands be holden of the king, & then she shal pay reliefe as an heire male shall.

Also of landes holden in socage, if the ancelster die, his heire being within the age of 14. yeres, the next friend of the heire to whom the inheritance may not disced shal haue the ward of his body & lands, till he shal come to the age of 14. yeres, & then he may enter. And whē the heire cometh to the age of xxi. yeres, the p̄ garden shal yeld him accompt for the profits thereof by him receiued.

Also such an heire in socage for his reliefe shall double his rent to the Lord the yere following the death of his ancelster, As if his ancelster held by xij. d. rent, the heire in the yere following shal pay the xij. d. for his rent, & other xij. d. for his relief, & the reliefe he must pay though he be within age at the death of his ancelster.

Also there is an olde Law & Custome in this realme, that a frehold by way of feoffment, gift, or lease, passeth not, without Livery of seison be made vpon the land according, though a deed of feoffment be thereof made & deliuered: but by way of surrender, partition & eschaunge, a frehold may passe without livery.

Also if a man make a wil of land wherof he is seised in his demesne as of fee, that wil is void, but if it had stād in feoffees hands, it had bin good. And also in Lōdon such a wil is good by the custome of the citie if it be inrolled.

Also a lease for term of yeres is but a chattel

by

Land
Guardian.

accompt.

Refus

inry.

seise.

Item H.L.
also and

by the law, & therefore it may passe without a-
ny livery of seilō: but otherwise it is of a state
for terme of life for that is a freehold in þ law,
and therefore livery must be made or els the
freehold passeth not.

Also by the old Custome of the realme, a man
may distrain for a rent service of cōmon right.
And also for a rent reserved vpon a gift in tail,
a lease for terme of life, of yerres, & at will, & in
such case the Lord may distreine the beasts of
tenāts, as sone as they come vpon the ground,
but the beasts of strangers that come in but by
maner of an escape, he may not distrein til they
haue bin leuant and couchant vpon the ground:
but for debt vpon an obligatiō, nor vpon a cō-
tract, nor for accōpt ne yet for arrerages of ac-
cōpt, nor for no maner of trespass. reparations,
nor such other, no man may distreine.

Also by the olde Custome of the realme al is-
sues that shalbe ioined betwixt party & party
in any court of record within the realm, except
a fewe wherof it needeth not to treat at this
time, must be tried by xij. free & lawfull men of
the visne that be not of affinity to none of the
parties. And in other courts that be not of re-
cord, as in the cōnty, court barō, hūdrēd & such
other like, they shalbe tried by the Othe of the
parties, & not otherwise, vnles the parties as-
sent that it shalbe tried by the homage. And it
is to be noted that Lords, barons, & al piers of
the Realme be excepted out of such trials if
they will, but if they will wilfully be swozne
therein, some say it is no error. And they may
if they wil haue a swor it out of the chauncery di-
rected

Distrain

E

Jury

The 7. Chapter.

reded to the sherife commaunding him that he shall not impanel them vpon no enquest.

And of this that is said befoze it appeareth that the customes aforesaid noz other like vn- to them, whereof be very many in the lawes of England, cannot be proued to haue y strength of a law onely by reason. For how may it be proued by reason that the eldest sonne shal on- ly inherite his father, & the yonger to haue no part, or that the husband shal haue the whole land for terme of his life as tenant by the cur- telie in such maner as befoze appeareth, And that the wife shal haue onely the third part in the name of her dower, & that the husband shal haue al the goods of his wife as his owne, And that if he die liuing the wife, that his execu- tors shal haue the goods, & not the wife? Al these and such other cannot be proued only by reason that it shoulde be so and no otherwise, although they be reasonable, & that with the custome therein bled suffiseth in the law, And a statute made against such generall customes ought to be obserued, because they be not mere- ly the law of reason.

Also the lawe of property is not the lawe of reason, but a law of custome, how be it that it is kept, and is also right necessarie to be kept in al realmes and among al people. And so it may be numbred among the generall customes of the realme. And it is to vnderstand that there is no statute y treateth of the beginning of the sayd customs, ne why they shoulde be holdē for law, And therfore after them that be learned in the lawes of the realme, the old custome of the re-

alme

the lawe is the onely & sufficient authoritie to the
in that behalf, And I pray thee shew me what
doctors hold therein, that is to say, whether a
custome onely be sufficient authoritie of any
law. D. Doctors hold that a lawe grounded
vpon a custome is the most surest lawe, but
this thou must alwaies vnderstand therewith
that such a custome is neither contrary to the
law of reason, nor to the law of God. And now
I pray thee shew me somewhat of the Maxi-
mes of the law of England whereof thou hast
made mention befoze in the 4. Chapter. Stu. I
will with good will.

¶ Of the 4. ground of the law of England.

Cap. 8.

The iij. ground of the law of England stan-
deth in diuers Principles that be called in the
law, Maximes, the which haue bin alwaies ta-
ken for lawe in this realme, so that it is not
lawfull for any that is learned to deny them:
for euery one of those maximes is sufficiēt au-
thority to himselfe. And which is a Maxime, &
which not, shal alway be determined by iud-
ges, & not by xij. men. And it needeth not to as-
signe any reason, why they were first receiued
for Maximes, for it suffiseth that they be not
against the law of reason, nor the law of God,
and that they haue alway bin taken for a law.
And such maximes be not only holdē for law,
but also other cases like vnto them, & al things
that necessarily folloiweth vpon the same, are
to be reduced to the like law, and therfore most
commonly there be assigned some reasons or
con-

The 8. Chapter.

consideration why such Maximes be reasonable, to the entent that other cases like may the more conveniently be applied to the. And they be of the same strength & effect in the lawe as statutes be. And though the general Custome of the realme be the strength & warrāt of the said Maximes as they be of the generall Customes of the realme, yet because the said general customes be in maner knowen thzough the Realme aswell to them that be vnlearned as learned, and may lightly be had and knowen, & that with little study. And the Maximes bee only knowē in the kings courts, or among the that take great study in the law of the realme, and among few other persons. Therefore they be set in this wryting for seuerall groundes & he that listeth may so accompt them, or if he wil, he may take them for no ground, after his pleasure, of which Maximes I shall hereafter shew thee part.

1 First there is a Maxime, that Escuage vncertein maketh knights seruice.

2 Also there is another Maxime, that Escuage certeine maketh socage.

3 Also that he that holdeth by Castel gard, holdeth by knights seruice, but he holdeth not by

4 Escuage. And that he that holdeth by r.p.s. to the gard of a castell holdeth by socage.

5 Also there is a Maxime, that a Discent taketh away an entre.

6 Also, that no Prescription in lands maketh a right.

7 Also, that a Prescription of rent & profits apprender out of land, maketh a right.

Also

Also that the limitation of a prescription generally taken, is from the time that no mans mind runneth to the contrary;

Also that assignes may be made vpon landes giuen in fee for terme of life, or for terme of yerres though no mention be made of assignes and the same law is of a rent that is graunted, but otherwise it is of a warranty and of a covenant.

Also that a condition to auoide a freeholde cannot be pleaded without deede, but to auoid a gift of chattell it may be pleaded without deede.

Also that a release or confirmation made by him that at the time of the release or confirmation made, had no right, is boide in the law, though a right come to him after, except it be with warranty, and then it shal barre him of all right that hee shall haue after the warrantie made.

Also that a right or title of action that only dependeth in action, cannot be giuen nor granted to none other but only to the tenant of the ground, or to him that hath the reuerſion or remainder of the same land.

Also that in an action of debt vpon a contract, the defendan may swage his lawe, but otherwise it is vpon a leale of landes for terme of yerres or at will.

Also that if an exigent in case of felony be awarded against a man: he hath thereby forthwith forfeited his goods to the king.

Also if the sonne be attainted in the life of the father, and after he purchaseth his charter

The 8. Chapter.

of pardon of the king. and after the father dyeth: In this case the lande shall eschete to the Lord of the fee, in so much that though he haue a yonger brother, yet the land shall not discend to him: for by the attainder of the elder brother the bloud is corrupt, & the father, in law died without heire.

16 Also if an Abbnt or a Prior alien the lands of his house and dieth, in this case, though his successor haue right to the landes, yet he may not enter, but he must take his action that is appointed him by lawe.

17 Also there is a maxime in the lawe, that if a villaine purchase lands and the Lord enter, he shall enjoy the land as his owne: but if the villaine alien before the Lord enter, the alienation is good. And the same law is of goods.

18 Also if a man steale goods to the value of xij. s. or above, it is felony & he shall die for it. And if it be vnder the value of xij. s. then it is but petite larceny, and he shall not die for it, but shall be otherwise punished after the discretion of the Judges, except it bee taken from the Person, for if a man take any thing how little soeuer it be from a mans person feloniously, it is called robbery and he shall die for it.

19 Also he that is arraigned vpon an Inditement of felonie shall be admitted in fauour of life to challenge xxxvj. Jurours peremptorie, but if he challenge any above that number, the lawe taketh him as one that hath refused the Lawe, because he hath refused three whole enquests, and therefore he shall die: but with cause hee may challenge as manye as he

he hath cause of challenge to. And further it is to be vnderstood, that such peremptory challenge shall not be admitted in appeale becaule it is at the suit of the party.

Also the land of euery man is in the law en- 20
closed fro other, though it lie in the open field. And therfore if a man do a trespass therin, the writ shalbe Quare clausum fregit.

Also the rents, commons of pasture, of turs 21
bary, reuerfions, remainders, noz such other things which lye not in manuel occupation, may not be giuen noz graunted to none other without writting.

Also that he that recouereth debt oz dama- 22
ges in the Kinges Court by such an action wherein a Capias lay into the Procelle, may within a yere after the recouerie haue a Capias ad satisfaciendum to take the bodie of the defendant, and to commit him to prison till he haue payde the debt and damages: but if there lay no Capias in the first action then the plain- tife shall haue no Capias ad satisfaciendum, but must take a Fieri facias, oz an Elegit within the yere oz a Scire facias after the yere, oz within the yere if he will.

Also if a release oz confirmation be made to 23. 11.
him, that at the time of the releale made, had nothing in the land &c. The release oz confir- mation is boide, except in certaine cases, as to bouch. and certaine other which need not here to be remembred.

Also there is a Maxime in the law of Eng- 24
lande, that the King may disseise no man, ne
C. 9. that

The 8. Chapter.

that no man may disseise the King, ne pull any reuerſion or remainder out of him.

25. Also the kings excellency is so high in the law, that no freehold may be giuen to the king ne be deriued from him, but by matter of Record.

26. Also there was sometime a Maxime and a lawe in England, that no man shoulde haue a writ of right, but by special suit to the king, & for a fine to be made in the Chauncerie for it. But these Maximes be changed by the statute of Magna charta Cap. 16. where it is said thus. Nulli negabimus, nulli vendemus rectum vel iustitiam. And by the words Nulli negabimus, a man shall haue a writ of right of course in the Chancerie without suing to the king for it. And by the words, Nulli vendemus, he shall haue it without fine: & so many times the old Maximes of the law be chaunged by statutes. Also though it be reasonable that for the manyfold diuerſities of actions that be in the lawes of England, that there should be diuerſities of Proces, as in the reall actions after one maner and in personall actions after an other maner: Yet it cannot be proued merely by reaso, that the same Proces ought to be had and none other: for by Statute it might be altered. And so the ground of the said Proces is to be referred only to the Maximes and Customes of the Realme.

And I haue shewed thee these maximes before rehearsed, not to the intent to shew thee specially what is the cause of the law in them, for that woulde aske a great respite. But I haue

have shewed the onely to the intent that thou maist perceiue that the said Maximes & other like, may bee conueniently set for one of the grounds of the lawes of England. Moreover there be diuers causes, whereof I am in doubt whether they be onely Maximes of the lawe, or that they be grounded vpon the law of reason, wherein I pray thee let me heare thine opinion.

Doct. I pray thee shew those cases that thou meanest, and I shall make thee answer therein as I shall see cause.

¶ Hereafter followe diuers cases, wherein the Student doubteth whether they be onely Maximes of the Lawe, or that they be grounded vpon the lawe of reason.

Cap. 9.

The lawe of England is, that if a man commaunde another to do a trespassse, & he doth it, that the commaunder is a trespasser.

And I am in doubt whether that it be onely by a Maxime of the lawe, or that it be by the law of reason.

Also, I am in doubt vpon what lawe it is grounded, th it the accessory shal not be put to answer before the principal &c.

Also, the law is that if an Abbot buy a thing that cometh to the vse of the house, & dieth, that his successor shal bee charged. And I am somewhat in doubt vpon what ground that

C. iij.

lawe

The 9. Chapter.

law dependeth.

- 3 Also, that he þ hath possessiō of land though it be by disseisin hath right against al men, but against him that hath right.
- 4 Also, that if an actiō real be sued against any man that hath nothing in the thing demaunded, the writ shall abate at the common law.
- 5 Also, that the alienation of the tenant hanging the writ noz his entre into religion, or if he be made a knight, or if he be a woman and take an hulbande hanging the writ, that the writ shall not abate.
- 6 Also, if land & rent that is going out of the same land, come into one mans hande of like estate, and like suertie of title, the rent is extinct.
- 7 Also if land discend to him that hath right to the same land before, he shall be remitted to his better title if he will.
- 8 Also if two titles be concurrant together, that the eldest title shalbe preferred.
Also that every man is bound to make recompence for such hurt as his beasts shal do in the corne or grasse of his neighbour, though he know not that they were there.
- 9 Also if the demaundant or plaintife hanging his writ, will enter into the thing demaunded, his writ shall abate. And it is manie times verie hard & of great difficulty to know what cases of the law of England be grounded vpon the lawe of reason, and what vpon custome of the Realme, And though it be hard to discusse it, it is very necessary to be known. for the knowledge of the perfect reason of the lawe

lawe: & if any man think that these cases be-
foze rehearsed be grounded vpon the lawe of
reason, then he may referre them to the first
ground of the law of Englande, which is the
law of reason, whereof is made mention in the
v. Chapter. And if any man think that they be
grounded vpon the law of custome, then he may
referee them to the maximes of the law, which
be assigned for the third ground of the lawe of
England, whereof mention is made in the viij
Chap. as befoze appeareth.

D. But I pray thee shew me by what autho-
rity is it proued in the lawes of England that
the cases that thou hast put befoze in the viij.
Chap. & such other which thou callest Maxi-
mes ought not to be denied, but ought to be ta-
ken as Maximes, for with they cannot be pro-
ued by reason as thou agreest thy selfe they ca-
not, they may as lightly be denied as affirmed,
vnlesse there be some sufficient authority to
approue them.

Stru. Many of the customes and Maximes of
the lawes of England be knowen by the vse &
the custome of the realme so apparantly that it
needeth not to haue any law wzitten thereof,
for what needeth it to haue any law wzitten
that the eldest sonne shall inherite his father,
or that all the daughters shal inherite toge-
ther as one heire, if there bee no sonne: or
that the husbände shall haue the goods and
chattels of his wife that shee hath at the time
of the espousels, or after: or that a bastarde
shall not inherite as heire, or the executours
shall haue the disposition of all the goods of
their

The 10. Chapter.

their testator: & if there be no executors that the Ordinary shall haue it, & the heire shal not meddle with the goods of his auncester, but if any particuler customes help him.

The other Maxims & customes of the law that be not so openly knowen among the people may be knowen partly by the law of Reason & partly by the Bookes of the Lawes of England called Yeares & Termes, & partly by diuers Records remaining in the R. Courtes and in his Treasorie: And specially by a booke called the Register, & also by diuers Statutes, wherein manie of the said Customes & Maxims be oft recited, as to a diligent Searcher will euidently appeare.

¶ Of the fift ground of the lawe of England.

Cap. 10.

The fift ground of the lawe of Englande standeth in diuers particuler customes vled in diuers counties towne, Cities, and Lordships in this Realme, the which particuler customes, because they be not against the Lawe of reason nor the law of God, though they be against the said generall customes or Maxims of the law, yet neuerthelesse they stand in effect & be taken for law, but if it rise in question in the kings courts, whether there be anye such particuler custome or not, it shall be tried by xij. men, & not by the Judges, except the same particuler custome be of Record in the

the same Court. Of which particuler customes, I haue hereafter noted some for an example.

First there is a custome in Kent that is called Gavelkind, that al the brethē shal inherit together, as sisters at the common law.

Also there is another particuler custome, that is called burghenglish, where the yonger sonn shal enherit before the eldest, & that custome is in Nottingham.

Also there is a custome in the Citie of London that free men there, may by their testament enrouled, bequeath their landes that they be seised of to whom they will, except to mortmaine. And if they be Citizens and freemen, that they also bequeth their landes to mortmaine.

Also in Gavelkind though the father be hanged, the sonne shal inherit. For their custome is, the Father to the bough, the sonne to the plough,

Also in some countries the wife shal haue the halfe of the husbands lands in the name of her dowry as long as she liueth sole.

And in some countrey the husband shal haue the halfe of the inheritance of his wife, though he haue no issue by her.

Also in some countrey an infant when he is of age of xv. yere may make a feoffement, & the feoffement good. And in some countrey when he can meat an elle of cloth.

¶ Of the sixt ground of the Lawe of England.

The

The 11. Chapter.

Cap. 11.

7 The sixth ground of the lawe of Englande standeth in diuers statutes made by our so-
ueraigne Lord the king & his progenitours, & by the Lords Spiritual and Temporall, & the commons in diuers Parliaments, in such cases where the Law of reason, the law of God, customes, Maximes, ne other groundes of the lawe seemed not to be sufficient to punish euill men, and to reward good men. And I remember not that I haue seene any other groundes of the law of England but onely these that I haue before remembred. Furthermore it appeareth of that I haue said before, that oft times two or thre grounds of the law of England must be ioined together, or that the plaintife can open & declare his right, as it may appeare by this example. If a man enter into an other mans lande by force, & after maketh seoffement for maintenance to defraud the plaintife from his action. In this case it appeareth that the said vnlawful entre is prohibited by the law of reason, but the plaintife shall recouer treble damages, that is by reason of the statute made in the 8. yere of king H. 6. Cap. 9. And that the damages shalbe seised by xij. men that is by the custome of the realme. And so in this case thre grounds of the law of England maintaine the plaintifes action.

And so it is in diuers other cases that neede not to be remembred now, & thus I make an end for this time, to speake any farther of the grounds of the law of England, D. I thanke the

thee for the great paine that thou hast taken therein: neuertheles for asmuch as it appeareth that thou hast said befoze, that the learned men of the Lawe of Englande pretende to verifie that the Lawe of England will nothing doo, ne attempt against the lawe of reason, nor the Lawe of God, I pray thee aunswere mee to some questions grounded vpon the Lawe of England how as thou thinkest the Lawe may stand with reason or conscience in them.

Sc. But the case and I shall make aunswere therein aswel as I can.

¶ The first question of the Doctor, of the law of England and conscience.

Cap. 12.

I haue heard say, that if a man that is bound in an Obligation pay the money, but he taketh no acquitaunce, or if he take one and it happeneth him to leese it, that in that case he shall bee compelled by the lawes of Englande to pay the money againe, And howe may it be said then, that that Lawe standeth with reason and conscience: for as it is grounded vpon the Lawe of reason, that debtes ought of right to bee payed, so it is grounded vpon the Lawe of reason (as mee seemeth) that when ehey be paid that he that payed them shoulde be discharged. Sc. First thou must vnderstande that it is not the Lawe of Englande, that if a man that is bounde in an Obligation paye the money without Acquitaunce
or

The 12. Chapter.

or if he take acquittance and leese it, that therefore the lawe determineth y^e he ought of ryght to pay the money eftsoones, for that lawe were both against reason and conscience, but though it is that there is a generall Maxime in y^e lawe of England, that in an action of debt sued vpon an Obligation, the defendandt shall not pled that he oweth not the mony, ne can in no wise discharge himselfe in that action, but he haue acquittance or some other writing sufficient in the lawe, or some other thing like, witnessing that he hath payed the money, and that is ordeined by the lawe to auoide a great inconuenience that els might happen to come to many people, that is to say, that euery man by a Nude paroll and by a bare Auerrement should auoide an Obligation. wherefore to auoid that inconuenience the lawe hath ordeined that as the defendandt is charged by a sufficient writing, that so he must be discharged by sufficient writing, or by some other thing of as high authoritie as the obligation is. And though it may folloiw thereupon, that in some particuler case a mā by occasion of that generall Maxime may be compelled to pay the money againe that he payed before, Yet neuer thelesse, no default can be therefore assigned in the lawe. For like as makers of lawe take heed to such things as may oft fall, and do most hurt among the people, rather then to particuler cases: So in likewise the generall grounds of the lawe of Englande heede moze what is good for many, then what is good for one singuler person only. And because it should be a hurt to many,

if

if an Obligation should be so lightly avoided by word, therefore the law specially pzeuenteth that hurt vnder such maner as before appeareth. And yet intendeth not noz commaundeth not, that the money of right ought to be paid againe, but setteth a generall rule which is good and necessarie to al the people, and that euerie man may well keepe without it be through his owne default. And if such default happen in any person, whereby he is without remedy at the common law, yet he may be holpen by a Sub pena, and so he may in many other cases where conscience serueth for him that were too long to rehearse now.

D. But I pray thee shewe mee vnder what maner a man may be holpen by conscience. And whether he shalbe holpen in the same court or in an other. S. Because it cannot be well declared where a man shall be holpen by conscience & where not, but it be first knowen what conscience is, therefore because it pertaineth to thee most properly, to treat of the nature and quality of conscience, therfore I pray thee that thou wilt make me some brieve declaration of the nature and quality of conscience, & then I shal aunswere to thy question aswell as I can. D. I will with good will do as thou sayest, and to the intēt that thou maist the better vnderstand that I shall say of conscience, I shall first shewe thee what Sinderchis is, and then what reason is, & then what conscience is, and how these three differ among themselves, I shall somewhat touche.

what

The 13. Chapter.

¶ VVhat *Sinderesis* is.

Cap. 13.

Sinderesis is a naturall power of the soule set in the highest part thereof, mouing and stirring it to good and abhorring euill. And therefore *Sinderesis* neuer sinneth nor erreth. And this *Sinderesis* our Lord put in man to the intent that the order of things should be obserued. For after Saint Dionise, the wisdom of God ioyneth y beginning of the second things to the last of the first things: for Aungell is of a nature to vnderstande without serching of reason, and to that nature mā is ioyned by *Sinderesis*, the which *Sinderesis* may not wholly be extingished neither in man, ne yet in dampned soules. But neuerthelesse as to the vse and exercise thereof, it may be let for a time, eyther through the darknes of ignorance, or for vndiscreete delectation, or for the hardnes of obstinacy. First by the darkenesse of ignorance *Sinderesis* may be let that it shal not murmur against euill, because he beleueth euill to be good, as it is in heretikes, the which when they die for the wickednes of their Errour, beleue that they die for the verie trowth of the faith. And by vndiscreete delectation, *Sinderesis* is sometime so overlayde, that remorse or grudge of conscience for that time can haue no place. For the hardnes of obstinacy *Sinderesis* is also let that it may not stirre to goodnesse, as it is in dampned soules that be so obstinate in euill that

that they may neuer be enclyned to good. And though Sinderesis may be sayd to that point extinct in dampned soules, yet it may not be said that it is fully extinct to all intents. For they alway murmur against the euill of the paine that they suffer for sinne. And so it may not be sayd that it is vniuersally, and to all intentes, and to all times extinct: and this Sinderesis is the beginning of all thinges that may be learned by speculation or studie, & ministreth the generall groundes and principles thereof. And also of all thinges that are to be done by man: an example of such thinges as may be learned by speculation appeareth thus: Sinderesis sayth that euery whole thing is more then any one part of the same thing, & that is a sure ground that neuer fayleth. And an example of thinges that are to be done, or not to be done: as where Sinderesis saith no euill is to be done, but that goodnes is to be done and folloxed, and euill to be fled, and such other.

And therfore Sinderesis is called by some mē, the law of reason, for it ministreth the principles of the law of reason, the which be in euery man by nature, in that he is a reasonable creature.

¶ Of reason.

Cap. 14.

When the first man Adam was created he receined of God a double eye, that is to

The 14. Chapter.

to say, an outwarde eye, whereby he might see visible thinges, and knowe his bodely enemies and eschewe them. And an inwarde eye, that is the eye of reason, whereby he might see his spirituall enemies that fight against his soule and beware of them. And among all gifts that god gaue to man, this gift of reason is the most noblest, for thereby man precelleth all beastes, and is made like to the dignity of Angels, discerning trouth from falshood, and euill from good. Wherefore he goeth farre from the effect that he was made to when he taketh not heede to the trouth, or when he preferreth euill before good.

And therefore after Doctors reason is the power of the soule, that discerneth betweene good and euill, and betweene good and better, comparing the other: the which also sheweth vertues, loueth good, and flieth vices. And reason is called righteous and good, for it is conforable to the will of God, and that the first thing thing, and the first rule that all thinges must be ruled by, and reason that is not righteous nor straight, but that is sayde culpable, is either because shee is deceyued with an Errour that might be overcome, or els through her pride or slouthfulness she enquireth not for knowledge of the trouth that ought to be enquired. Also reason is divided in two partes, that is to say, into the higher part and into the lower part.

The higher part hideth heauenly things and eternall, and reasoneth by heauenly lawes or by

by heauenly reason what is to be done, & what is not to be done, and what things God commaundeth, and what he prohibiteth. And this higher part of reason hath no regard to transitory things or tēporal things, but that sometime as it were by maner of counsell, she bringeth forth heauenly reasons to order wel tēporal things. The lower part of reason worketh most to gouerne wel tēporal thinges, & she groundeth her reasons much vpon laws of man, & vpon reason of man, wherby she cōcludeth that that is to be done, that is honest and expedient to the common wealth, or not to be done, that is not expedient to the common wealth. And so that reason wherby I know God & such things as pertain to God, belongeth to the highest part of reason. And y^e reason wherby I know creatures, belongeth to the lower part of reason. And though these ij. partes, that is to say, the higher part and the lower part be one in deed and essence, yet they differ by reason of their working & of their office as it is of one selfe eye, that sometime looketh vpsward, & sometime downeward.

¶ Of Conscience.

Cap. 15.

This word Conscience, which in latin is called Conscientia is cōpounded of this preposition, cum, that is to say in English, with, and with this nowne Scientia, y^e is to say in English, knowledge, and so conscience is asmuch to say as knowledge of one thing with an other thing, & conscience so taken is nothing els but

The 15. Chapter.

an applying of any sciēce or knowledg to some
particuler act of man. And so conscience may
sometime erre & sometime not erre. And of consci-
ence thus taken, doctors make many discripti-
ons, whereof one Doctor saith, that conscience
is the law of our vnderstanding. Another, that
conscience is an habite of the mind discerning
betwixt good & evil. Another, that conscience is
the iudgment of reason, iudging on the partis-
culer acts of man: al which sayings agree in one
effect (that is to say) that conscience is an actual
applying of any cunning or knowledge to
such things as be to be dōe, wherupō it follo-
weth that vpon the most perfit knowledg of any
law or cunning, & of the most perfit & most true
applying of the same to any particuler act of mā
folloiweth the most perfit, the most pure, & the
most best conscience. And if there be default in
knowing of the truth of such a law, or in the
applying of y^e same to particuler acts, thē there-
upon folloiweth an error or default in conscience,
as it may appeare by this example. Sinderelis mi-
nistreth a vniuersal principle that neuer erreth
(that is to say) y^e an vnlawful thing is not to
be done. And thē it might be taken by some mā
that euery oth is vnlawful because the Lord
saith. Mat. v. Ye shal in no wise sweare. And yet
he y^e by reason of the said words wil hold that
it is not lawful in no case to sweare erreth in
conscience, for he hath not the perfit knowledg
& vnderstanding of the truth of the said Gos-
pel, nor he reduceth not the saying of scripture,
to other scripturs, in which it is granted that
in some case an oth may be lawful, & the cause
why

Why conscience may so erre in the said case, & in other like, is because conscience is formed of a certain proposition or questiō grounded perticularly vpon vniuersall rules ordeined for such things as are to be done. And because a particular proposition is not knowē of himself, but must appere & be searched by a diligēt search of a reason, therfore in search & in the conscience y^e should be formed therupon may happē to be error, & therupon it is said y^e there is error in conscience, which error cometh either because he doth not assent to y^e he ought to assent vnto, or els because his reasons wherby he doth referre one thing to another, is deceiued. For further declaration wherof it is to vnderstand y^e error in conscience cometh by maner of waies. First is thzough ignorance: & y^e is when a mā knoweth not what he ought to do, & thē he ought to aske counsell of thē y^e he thinketh most expert in that science, whereupon his doubt riseth. And if he can haue no counsell thē he must wholly commit him to God, & he of his goodnes wil so order him, that he wil saue him from offence. The second is thzough negligence, as when a mā is negligent to search his owne conscience, or to enquire the truth of other. The iij. is thzough pride, as when he wil not meeken himselfe, ne beleue them that be better & wiser then he is. The fourth is thzough singularity as when a man followeth his owne wit, and will not confirm himselfe to other, nor followe the good common waies of good men. The fift is thzough an inordinate affectiō to himselfe wherby he maketh conscience to follow his desire

The 15. Chapter.

• & so he causeth her go out of her right course. The vi. is through pusillanimity wherby some person dzedeth oft times such things as of reason he ought not to dzed. The vii. is through perplexity, & this is when a man beleueth himselfe to be so set betwixt ij. sinnes that he thinketh it vnpossible, but that he shall fal into the one, but a man can neuer be so perplexed in deed but through an error in conscience, & if he will put away that error he shalbe deliuered, therefore I pray thee that thou wilt alwaies haue a good conscience, & if thou haue so, thou shalt alwaies be mery, & if thine owne hart repproue thee not thou shalt alwaies haue inward peace. The gladnes of rightwise men is of God & in God, & their ioy is alwaies in truth and goodness. There be many diuersities of conscience, but there is none better then that, wherby a man truly knoweth himself. Many me know many great & high cunning things, & yet know not themselves, & truely he that knoweth not himself knoweth nothing wel. Also he hath a good & cleane conscience, that hath purity and cleanes in his hart, truth in his word, & righteousness in his deed. And as a light is set in a lanterne that all y^e is in the house may be seene therby, so almighty God hath set conscience in the mids of euerý reasonable soule as a light wherby he may discern & know what he ought to do, & what he ought not to do. Therefore forasmuch as it behoueth thee to be occupied in such things as pertain to the law: It is necessarie that thou euer hold a pure & cleane conscience, specially in such things as cōcerne restitution:

tion: for the sinne is not forgiven but if þ thing
that is wrongfully taken be restored. And I
cōseill thee also that thou loue þ. is good & flie
that is euil, & that thou do to another as thou
wouldest should be done to thee, & that thou do
nothing to other þ thou wouldest not should
be don to thee. What thou do nothing against
trouth, that thou liue peaceably w thy neigh-
bor, and that thou do Justice to euery man as
much as in thee is. And also that in euery ge-
neral rule of the law, thou do obserue & keepe
equitie: & if thou do thus, I trust þ light of the
lanterne, that is thy cōscience shal neuer be ex-
tingued. S. But I pray the shewe me what is
that equity þ thou hast spoken of before, & that
thou wouldest that I should keepe. D. I will
with good will shew thee somewhat thereof.

¶ VVhat is Equitie.

Cap. 16.

Equitie is a right wisenes that considereth
all the particuler circumstances of the deede,
the which also is tēpozed with the sweetnes
of mercy. And such an equity must alway be
obserued in euery law of man, & in euery gene-
ral rule therof, and that knew he wel, that said
thus, Lawes couet to be ruled by equity. And
the wise man saith, Be not ouermuch right-
wise: for the extreme rightwisenes is ex-
treme wrong, as who saith: if thou take all
that the words of the Law giueth thee, thou
shalt sometime do against the Law. And for
the plainer declaration what equity is thou
shalt vnderstand that sith the deedes and actes

D. iij.

of

The 16. Chapter.

of men, for which lawes bin ordeined, happen in diuers maners infinitely. It is not possible to make any general rule of þ law, but that it shal faile in some case, & therefore makers of lawes take heede to such things as may often come, & not to euery perticuler case, for they could not though they would. And therefore to folloiw þ wordes of the law were in some case both against iustice & the common wealth, wherfore in some cases it is necessary to leaue the wordes of the law, & to folloiw that reason & Justice requireth, & to that intent equity is ordeined: that is to say, to temper & mitigate the rigor of the law. And it is called also by some men Epicaia, the which is no other thing but an exception of the law of God, or of the law of reason from the generall rules of the law of man, when they by reason of their generality would in any particuler case iudge against the law of God, or the law of reason, the which exception is secretly vnderstood in euery generall rule of euery positive law. And so it appeareth that equity taketh not away the very right but only that, that seemeth to be right by the general wordes of þ law, nor it is not ordeined against þ crueltie of the law, for þ law in such case generally taken, is good in himself but equity folloiweth the lawe in all perticuler cases where right and Justice requireth, notwithstanding that general rule of the law be to the contrary: wherfore it appeareth þ if any law were made by a man without any such exception expressed or implied, it were manifestly vnrasonable, & were not to be suffered: for such cases might

come

come that he that would obserue \bar{h} law should break both the law of God & the law of reason. As if a man make a bow \bar{h} he wil neuer eate white meat, & after it happeneth him to come there where he can get no other meat. In this case it behoueth him to break his auow, for \bar{h} particular case is excepted secretly from his general auow by this equity or Epicay, as it is said before. Also if a law were made in a Citie that no man vnder the pain of death should open the gates of the Citie before the sunne rising, yet if the citizens before that houre flying from their enemies come to the gates of the city, & one for sauing of the citizens openeth the gates before the houre appointed by \bar{h} law, yet he offendeth not the law, for that case is excepted from the said generall law by equity as is said before: & so it appereth \bar{h} equity rather followeth the intent of the law, then the words of \bar{h} law. And I suppose that there be in likewise some like equities grounded vpon the general rules of the law of \bar{h} realm. S. Ye verely, where of one is this, there is a general prohibition in the lawes of Englad, that it shal not be lawfull to any man to enter into \bar{h} freehold of an other without authority of the owner or the lawe: but yet it is excepted from \bar{h} said prohibitio by the law of reason, that if a man driue beasts by the high way & the beasts happen to escape into the cozne of his neighbor, & he to bring out his beastes that they should do no hurt goeth into the ground & fetteth out the beastes there he shall iustifie that entre into the ground by the Law. Also notwithstanding the Statute

D. iij.

of

The 16. Chapter.

of Ed. 3. made the xiiij. yere of his reigne wher-
by it is ordeined that no man vpon pain of im-
prisonmēt should giue any almes to any vali-
ant begger, that is wel able to labor: Yet if a
man meste with a valiant begger in so colde a
wether and so light apparel, that if he haue no
cloths he shal not be able to come to any towne
to haue succor, but is likely rather to die by
the way, & he therefore giueth him apparel to
saue his life, he shalbe excused by the said sta-
tute by such an exception of the law of reason
as I haue spoken of. D. I know well that as
thou saist he shalbe excepted of the said statute
by conscience, & ouer that, y he shal haue great
reward of God for his good deed, but I would
wit whether the party shalbe so discharged in
the cōmon law by such an exception of the law
of reason or not, for though ignorāce vnuinci-
ble of a statute excuse the party against God,
yet (as I haue heard) it excuseth not in the
lawes of the realme, ne yet Chancery, as some
say, although the case be so that the partie to
whom the forfaiture is giuen may not with
conscience leaue it. S. Merely, by thy question
thou hast put me in a great doubt, wherfore I
pray thee giue me a respite therin, to make thee
an answer, but as I suppose for y time (howe-
beit I wil not fully affirme it to be as I say)
it shoulde seeme that he shoulde well plede it
for his discharge at the common law, because it
shalbe taken that it was the intent of the ma-
kers of the statut to except such cases. And the
iudges may many times iudge after the minde
of the makers as farre as the letter may suffer
and

And so it semeth they may in this case. And diuers other exceptions there be also from other general groundes of the law of the Realme by such equity, as thou hast remembred before, that were too long to reherse now. Do. But yet I pray thee shew me shortly somewhat more of thy mind vnder what maner a man may be holpen in this Realme by such equity. S. I will with good will shew thee somewhat therein.

¶ In what maner a man shalbe holpen by equitie in the lawes of England,

Cap. 17.

First it is to be vnderstood there be in many cases diuers exceptions from the generall grounds of the Law of the Realme by other reasonable grounds of the same law, wherby a mā shalbe holpen in the common law, As it is of his general ground, that it is not lawfull for any man to enter vpon a Discent, yet the reasonableness of the law excepteth from y^e ground, an infant that hath right, & hath suffered, such a discent and him also that maketh continuall claime, & suffereth thē to enter, notwithstanding the discent. And of that exception they shal haue auantage in the common law, and so it is likewise of diuers statutes, as of the Statute wherby it is prohibited, that certain perticuler tenants shall do no wast, yet if a lease for terme of yerres be made to an infant that is within yerres of discretiō, as of the age of v. or vi. yerres, & a stranger do wast, in this case this
infant

The 18. Chapter

infant shal not be punished for the wast, for he is excepted & excused by the law of reason. And a woman couert to whom such a leas is made after the couerture shal be also discharged of wast after her husbands death by a reasonable maxime & custome of the realme. And also for reparations to be made vpon the same ground it is lawfull for such peticuler tenants to cut down trees vpon the same ground to make reparations. But the cause there as I suppose is for that the mind of the makers of the saide estatute, shalbe take to be, that that case should be excepted. And in all these cases the parties shalbe holpen in the same court, & by the comon law, & thus it appeareth that sometime a man may be excepted from the rigor of a maxime of the law by another Maxime of the lawe. And sometime from the rigor of a statute by the law of reason, & sometime by the intent of the makers of the statut: but yet it is to be vnderstood that most commonly, where any thing is excepted from the general customes or Maximes of the lawes of the realme, by the law of reason y party must haue his remedy by a writ y is called Sub pena, If a Sub pena lye in the case. But where a Sub pena lyeth, & where not, it is not our intet to treat of at this time. And in some case there is no remedy for such an equity by way of compulsion, but al remedy therein must be committed to the conscience of the partie. Doct. But in case where a Sub pena lyeth to whom shal it be directed, whether to the iudge or the party? S. It shal neuer be directed to the iudge, but to the partie plaintife or to his attorney.

D. Is there any mention made in the lawe of Englande of any such equities? S. Of this terme Equitie to the intent that is spoken off here, there is no mention made in the lawe of Englande, but of an Equity deriued vpon certeine statuts mention is made many times and often in the law of England. But that equity is all of an other effect then this is, but of the effect of this equity that we nowe speake of, mention is made manye times, for it is oft times argued in the lawe of England, where a Sub pena lyeth, and where not, and daile Billes be made by men learned in the Law of the Realme, to haue Sub penas. And it is not prohibited by the law, but that they may well do it so that they make them not, but in case where they ought to be made, and not for vexation of the party, but according to the trouth of the matter. And the Law will in many cases that there shal be such remedy in the Charter vpon diuers things grounded vpon such equities, and then the Lord Chancellor must order his conscience after the rules and groundes of the Lawe of the Realme, in

The 18. Chapter

in so much that it had not bin inconvenient to have assigned such remedy in the Chancery vpon such equities for the seven groundes of the law of England, but forasmuch as no Record remaineth in the kings court of no such bill ne of the writ of Sub pena or Injunction that is laid thereupon, therefore it is not set as for a special ground of the law, but as a thing that is suffered by the law. D. Then sith the parties ought of right in many cases to be holpen in the Chauncerie vpon such equities: It semeth that if it were ordeined by statute, that there should be no remedy vpon such equities in the Chancery nor in none other place, but that euerie matter should be ordered only by the rules and groundes of the common law, that the statute were against right and conscience. S. I think the same, but I suppose there is no such statute. D. There is a statute of that effect, as I haue heard say, wherein I would gladly heare thy opinion. Stu. Shew me that statute and I shall with good will say as me thinketh therein.

¶ Whether the statute hereafter rehearsed by the
Doctor be against conscience
or not.

Cap. 18.

There is a statute made in the 4. yere of king
H. the 4. Cap. 23. whereby it is enacted that
iudgement giuen in the kings Courtes, shall
not be examined in the Chancery, Parliamēt,
nor

nor elsewhere, by which statute it appeareth that if any Iudgement be giuen in the kings courts against an equity or against any matter of conscience, that there can be had no remedie by that equity, for the iudgment cannot be reformed without examination, and the examination is by the said statute prohibited, wherefore it seemeth that the said statute is against conscience: what is thine opinion therein?

S. If iudgements giuen in the kings courts should be examined in the Chancery before the kings counsel, or in any other place, the plain- tifes or demandants should seldome come to the effect of their suit, ne the lawe should neuer haue end. And therefore to eschew that incon- uenience that statute was made. And though parauenture by reason of that statut, some sin- gular person may happen to haue lost: Neuer- thelesse the said statute is very necessary to es- chewe many great vexations and vniust ex- pences that woulde els come to many plain- tifes that haue rightwisely recovered in the kings Courts. And it is much more provided for in the law of England y^e hurt nor damages should not come to many, the only to one. And also the said statut doth not prohibite equity, but it prohibiteth only the examination of the iudgement for the eschewing of the inconueni- ence before rehearsed. And it seemeth that the said statut standeth with good conscience. And in many other cases where a man doth wrong yet he shal not be compelled by way of compulsi- on to reforme it, for many times it must be left to the conscience of y^e party, whether he wil re- dresse

The 19. Chapter.

redresse it or not. And in such case he is in conscience aswel bound to redresse it if he wil save his soule, as he were if he were compellable thereto by the law, as it may appeare in diuers cases that may be put vpon the same grounde. D. I pray thee put some of these cases for an example. S. If the defendant swage his law in an action of debt brought vpon a true debt, the plaintife hath no means to come to his debt by way of compulsion, neither by Sub pena, nor otherwise, & yet the defendant is bound in conscience to pay him. Also if the graund Jury in attaint affirme a false verdict giuen by the petite Jury, there is no further remedy but the conscience of the partye. Also where there can bee had no sufficient prooffe, there can be no remedy in the Chauncery, no more then there may be in y^e spiritual court. And because thou hast giuen an occasion to speak of conscience I would gladly heare thy opinion where conscience shalbe ruled after the law, & where y^e law shalbe ruled after conscience. D. And of y^e matter I would likewise gladly here thy opinion, specially in cases grounded vpon the laws of Englande, for I haue not heard but little thereof in time past, but before y^e put any case thereof: I would that thou wouldest shew me how these two questions after thy opinion are to be vnderstood.

¶ Of what law this question is to be vnderstood: that is to say, where conscience shalbe ruled after the Law.

Cap. 19.

The

The lawe whereof mention is made in this question, that is to say: where conscience shalbe ruled by the law, is not as me semeth to be vnderstood only of the law of reason, and of the law of God, but also of the law of mā, that is not contrary to the law of reason, nor the law of God, but that it is superadded vnto the for the better ordering of the common wealth, for such a law of man is alwaies to be set as a rule in conscience, so that it is not lawfull for a man to fram it on the one side, ne on thother, for such a law of man hath not only y strength of mans law, but also of the law of reason, or of the law of God whereof it is deriued, for lawes made by man which haue receiued of god power to make lawes, be made by God. And therfore conscience must be ordred by that law as it must be vpon the law of God & vpon the law of reason. And furthermore the law whereof mention is made in the latter ende of the Chapter next before, that is to say, in y question wherein it is asked where the law is to be left & forsaken for conscience, is not to be vnderstood of the law of reason, nor of the law of God: for the two lawes may not be left, nor it is not to be vnderstood of the law of mā that is made in perticuler cases, and that is consonant to the law of reason, & to the law of God, and that yet that law should be left for conscience: for of such a law made by man, conscience must be ruled as it is said before: nor it is not to be vnderstood of a law made by man commanding or prohibiting any thing to be done that is against the law of reason, or the law of god.

For

The 19. Chapter.

For if any law made by man, bind any person to any thing that is against the said laws, it is no law, but a corruption & a manifest error. Therefore after them that bee learned in the laws of England, the said question, that is to say, where the law is to be left for conscience, & where not, is to be understood in diuers manners, and after diuers rules as hereafter shall somewhat be touched.

First many vnlearned persons beleeue that it is lawfull for them to do with good conscience all things which if they do them, they shal not be punished therefore by the law, though the law doth not warrant them to do that they do, but onely when it is done doth not for some reasonable consideration punish them that doth it, but leaueth it onely to his conscience. And therefore many persons do oft times that they should not do, & keepe as their owne that, that in conscience they ought to restore. Wherefore there is the laws of England this case.

If two men haue a wood iointly, & the one of them selleth the woode and keepeth all the money wholly to himselfe: In this case his fellow shall haue no remedie against him by law, for as they when they tooke the woode iointly, put eche other in trust, and were contented to occupy together, so the law suffereth them to order the profits thereof according to the trust that eche of the put thother in. And yet if one take all the profits, he is bounde in conscience to restore the halfe to his fellow, for as the law giueth him right onely to halfe the land, so it giueth him right onely in conscience

science to the halfe profits. And yet nevertheless it cannot be said in that case, that the law is against conscience, for the law neither wil-
leth ne commaundeth y one should take all the profits, but leaueth it to their conscience, so that no default can be found in the law, but in him that taketh al the profits to himselfe may be assigned default, which is bound in conscience to refozme it, if he will saue his soule, though he cannot be compelled thereto by the law. And therefore in this case & other like that opinion which some haue, that they may do with conscience, al that they shal not be punished for by the law if they do it, it is to be left for conscience: but the law is not to be left for conscience.

Also many men think that if a man haue lād that another hath title to, if he y hath the right shal not by the action that is giuen him by the law to recouer his right by, recouer damages, that then he that hath the land is also discharged of damages in conscience, & that is a great error in conscience: for though he cannot be compelled to yeld the damages by no mans lawe, yet he is compelled thereto by the law of reason, & by the law of God, whereby we be bound to do as we woulde be done to, and that we should not couet our neighbors goods: & therefore if tenant in taile be disseised and the disseisor dieth seised, and then the heire in the taile bringeth a Formdon & recouereth the land & no damages, for the law giueth him no damage in that case, yet the tenāt by conscience is bound to yeld damages to the heire in taile from the

The 19. Chapter.

Death of his ancestor. Also it is taken by some men, that the law must be left for conscience where the law doth not suffer a man to deny what he hath before affirmed in court of Record, or for what he hath wilfully excluded himselfe there for some other cause: as if the daughter that is only heir to her father, will sue livery with her sister that is a bastard, in that case she shal not be after receined to say that her sister is a bastard, in so much that if her sister take halfe the land with her, there is no remedy against her by the law. And no more there is of diuersity in other estoppels, which were too long to rehearse now. And yet the party that may take auantage of such an estoppel by the law, is bound in conscience to forsake that aduantage, specially if he were so estopped by ignorance, & not by his own knowledg and assent, for though the law in such cases giueth no remedy to him that is estopped, yet the law iudgeth not that the other hath right vnto the thing that is in variance betwixt them. Also it is to be understood what the law is to be left for conscience, where a thing is tried and found by verdict against the truth, for in what common law the iudgment must be given according as it is pleaded and tried, like as it is in other laws, that the iudgment must be given according to that, that is pleaded and proued. And it is to be understood that the law is to be left for conscience, where the cause of the law doth cease, for when the cause of the law doth cease, the law also doth cease in conscience, as appeareth by this case hereafter following.

per mulierem et filiam

A man maketh a lease for terme of life & after a stranger doth wast, wherfore the lessee bringeth an action of Trespas, & hath iudgement to recouer damages, hauing regard to the treble damages that he shal yeld to him in the reuer- sion. And after he in the reuer sion before action of wast sued, dieth: so that the action of wast is thereby extincted, then the tenant for terme of life (though he may sue execution of the sayd iudgement by the law) yet he may not do it by conscience, for in conscience he may take no more then he is hurted by the said Trespas, be- cause he is not charged ouer with the treble daages to his lessoe. Also it is to be understood where a law is grounded vpon a presumption, if the presumption be vnttrue, then the law is not to be holdē in conscience. And now I haue shewed thee somewhat how the question, that is to say, where the law shal be ruled after con- science. I pray thee shew me whether there be not like diuersities in other laws, betwixt law & conscience. D. Yes verely, very many wherof thou hast recited one before, where a thing that is vnttrue is pleaded, and proued, in which case iudgement must be giuen according as well in the law Ciuile, as in law Cannon. And an o- ther case is, that if the heire make not his in- uentory, he shal be bound after the law Ciuile to all the debts though the goods amount not to so much. And the law Canon is not against that lawe, and yet in conscience the heire which in the lawes of Englande is called an Executour is not in that case charged to the debts, but according to the value of the goods.

E. ij.

And

J. m. c. h. y.

The 20. Chapter.

And nowe I pray thee shewe mee some cases
where conscience shalbe ruled after the lawe.
S. I wil with good wil shew thee somewhat as
me thinketh therein.

¶ Here followeth diuers cases where conscience is
to be ordred after the Law.

Cap. 20.

The eldest sone shal haue & enioy his fathers
lands at the Common law in conscience, as
he shal in the law, And in Burghenglsh the
yonger sonne shal enioy the inheritance, & that
in conscience. And in Gavelkind al the sonnes
shal inherit the land together as daughters, at
the common law & that in cōscience. And there
can be none other cause assigned why cōscience
in the first case is with the eldest brother, & in
the second with the yonger brother, & in the 3.
case with all the brethren, but because the
law of England by reason of diuers customes
doth somtime giue the land wholly to the eldest
sonne, somtime to yongest, & somtime to all.

Also if a man of his mere motion make a feff-
ment of two acres of land, lying in two seueral
shires, & maketh liuery of seisin in the one acre
in the name of both. In this case the feoffes
hath right but only in the acre whereof liuery
of seisin was made, because he hath no title by
the law: but if both acres had bin in one shire
he had had good right to both. And in these ca-
ses the diuersitie of the law maketh the diuer-
sitie of conscience.

Also

Also if a mā of his mere motion make a fesse-
ment of a Manor & saith not to haue & to hold
etc. with thappurtenances, in that case the fesse-
fee hath right to the demesne lands, and to the
rents if there be atturment & to the common
pertaining to the Manor, but he hath neither
right to the Aduowsons appendant if any be,
nor to the villeins regardant, but if this terme
with thappurtenances, had bin in the deed, the
feoffee had right in conscience aswell to the ad-
uowsons and villeins, as to the residue of the
Manor: but if the king of his mere motiō giue
a manor with the appurtenances, yet the do-
nee hath neither right in law nor conscience to
the aduowsons nor villeins. And the diuersi-
ty of the law in these cases maketh the diuersi-
tie of conscience.

Also if a man make a lease for terme of yeres
yelding to him & to his heirs a certain rent vp-
on condition, that if the rent be behind by pl.
daies etc. that then it shalbe lawfull to the les-
sor & his heirs to reenter. And after the rent is
behinde, the lessor asketh the rent according to
the law & it is not paid, the lessor dieth, his
heire entreth. In this case his entre is lawfull
both in law & conscience, but if the lessor had di-
ed before he had demanded the rent, & his heire
demanded the rent, & because it is not payd he
reentreth, in that case his reentre is not lawfull
neither in law nor in conscience.

Also if the tenat in dower sow her land & die
before the corne be ripe, the corne in conscience
belongeth to her executors, & not to him in the
reuerſion: but otherwise it is in conscience of

The 20. Chapter.

grasse & frutes. And the diuersity of the lawe maketh there also the diuersity in conscience.

Also if a man seised of lands in his demesne, as of fee, bequeth the same by his last wil to another & to his heirs, & dieth: In this case the heire notwithstanding the wil hath right to the land in conscience. And the reason is, because the law iudgeth that wil to be void, & as it is void in the law, so is it void in conscience.

Also if a man grant a rent for terme of life & make a lease of land to y^e same grantee for terme of life, & the tenant alieneth both in fee: In this case he in the reuersion hath good title to the land both in law & conscience, & not to the rent. And the reason is because the land by the alienation is forfeit by the law to him in the reuersion and not the rent.

Also if lands be giuen to two men, and to a woman in fee, & after one of the men entermarrieth with the woman, & alieneth the land and dieth: In this case the woman hath right but only to the third part, but if the man & the woman had bin married together before the first feoffment, then the woman notwithstanding the alienation of her husband should haue had right in law & conscience to the one half of the land. And so in these two cases conscience doth follow the law of the Realme. Also if a man haue two sonnes, one before espousels, & another after espousels, and after the father dieth seised of certain lands: In that case the younger sonne shal enjoy the lands in this Realme as heire to his father both in law and conscience. And the cause is because that sonne bozne after espous-

espousels, is by the law of this realme the best
 the heire, & the elder sonne is a bastard, And of
 these cases & many other like in the lawes of
 England may be formed the Silogisme of consci-
 ence or the true iudgment of conscience in this
 maner. Sinderesis ministreth the Maior thus,
Rightwisenes is to be done to every man, by
 on which Maior by law of England ministreth
 the minor thus. The inheritance belongeth to
 the sonne borne after espousels, & not to by sonne
 borne before espousels, then conscience maketh
 the conclusion, & saith: therefore the inheritāce
 is in conscience to be giuen to the sonne borne
 after espousels. And so in other cases infinite
 may be formed by the law the Silogisme or the
 right iudgement of conscience: wherefore they
 that be learned in the law of the realm say that
 in every case where any law is ordeined for by
 disposition of lāds & goods, which is not against
 the law of God, nor yet against the law of rea-
 son, that the law bindeth al them that be vnder
 the law in the Court of conscience, that is to
 say, inwardly in his soule. And therefore it is
 somewhat to maruel that spiritual men haue
 not indeuored theselues in times past to haue
 more knowledge of the kings lawes then they
 haue done, or that they yet do, for by the igno-
 rance therof they be oft times ignorant of that
 that should order them according to right and
 Justice, as well concerning themselves as o-
 ther that come to them for Counsaile. And
 now forasmuch as I haue answered to
 thy questions as well as I can: I pray thee
 that thou wilt shew me thy opinion in diuers

The 21. Chapter.

cases foꝛmed vpon the law of England wher-
in I am in doubt, what is to be holden therein
in conscience. D. Shew me thy questions & I
will say as me thinketh therein.

The first question of the Student?

If an infant that is of the age of xx. yere and
hath reason and wisdom to gouerne himself
selleth his land, & with the mony thereof buy-
eth other land of greater value then the first
was and taketh the profits thereof, whether
may that infant alke his first land again in co-
science, as he may by the law. D. What thinkest
thou in that question? S. We seemeth that foꝛ-
asmuch as the law of Englande in this article
is grounded vpon a presumption, that is to say,
that infants commonly afoze they be of the age
of xx. yeres be not able to gouerne themselfe,
that yet foꝛasmuch as that presumption say-
eth in this infant that he may not in this case
with conscience alke the lande againe that hee
hath sold to his great auantage as befoze ap-
pereth. D. Is not this sale of the infant & the
fessement made therupon if any were, voidable
in the law? S. Yes verely. D. And if the fesse-
haue no right by the bargaine, nor by the
fessement made thereupon whereby should he
then haue right therto as thou thinkest? S. By
conscience as me thinketh, foꝛ the reason that
I haue made befoze. D. And vpon what lawe
should that conscience be grounded, that thou
spea-

speakest of, for it cannot be grounded by ^h law
 of the realme, as thou hast said thy selfe: And
 me thinketh that it cannot be grounded vpon
 the law of God, nor vpon the law of reason,
 for feoffements nor contracts be not grounded
 vpon neither of those lawes, but vpon the law
 of man. S. After the law of propertie was or-
 deined the people might not conueniently liue
 together without contracts, & therefore it see-
 meth that contracts be grounded vpon the law
 of reason, or at the least vpon the law that is
 called Ius gentium. Do. Though contractes be
 grounded vpon the law that is called Ius gen-
 tium, because they be so necessarie and so gene-
 rall among all people, yet that proueth not
 that contractes be grounded vpon the lawe of
 reason, for though the lawe called Ius gentium
 be much necessarie for the people, yet it may be
 chaunged. And therfore if it were ordeined by
 statute that there should be no sale of land, ne
 no contract of goods, and if any were, that it
 should be boide, so that euery man should con-
 tinue still seised of his landes and possessed of
 his goods, the statute were good. And then if a
 man against that statute solde his land for a
 summe of money, yet the seller might lawfully
 retaine his land according to the statute. And
 then he were bound to no more but to repay the
 money that he receiued with reasonable expē-
 ces in that behalfe, And so in likewise me thin-
 keth that in this case the infāt may with good
 conscience reenter into his first lande, because
 the contract after the Maximes of the law of
 the Realme is boide, for as I haue heard the
 Max-

The 22. Chapter

Maximes of the law be of as great strength in the law as statutes. And some thinke that in this case the infant is bounde to no more, but only to repay the mony to him that he sold his land vnto, with such reasonable costs & charges as he hath sustained by reason of the same. But if a man sel his land by a sufficiēt & lawfull contract, though there lack liuery of seisin or such other solemnities of the law, yet the seller is bound in conscience to perforce the contract, but in this case y^e contract is insufficient, & so me thinketh great diuersity betwixt the cases. S. For this time I hold me contented with thy opinion.

¶ The second question of the Student.

Cap. 22.

¶ If a man that hath landes for terme of life be impanelled vpon an inquest, & thereupon leueth issues & dieth, whether may those issues be leuied vpon him in the reuersion in conscience as they may be by the law? D. If they may be leuied by the law, what is the cause why thou dost doubt whether they may be leuied by conscience? S. For there is a Maxime in the lawes of England, that where two Titles run together, the eldest title shalbe preferred. And in this case the title of him in the reuersion, is before the title of the forfaitur of y^e issues. And therefore I doubt somewhat whether they may be lawfully leuied. D. By that reasoⁿ it seemeth thou art in doubt what y^e law is in this case, but

but y^e must necessarily be knowe, for els it were in vaine to argue what conscience wil therein. S. It is certein that the law is such, & so it is likewise if the husband forsait issues, and die, those issues shall be leued on the landes of the wife. D. And if the law be such, it seemeth that conscience is so in likewise, for sith it is the lawe that for execution of Justice every man shalbe impanelled when need requireth, it seemeth reasonable, that if he wil not appeare that he should haue some punishmet for his not appearance, for els the law should be clerely frustrate in that point. And the paines as I haue heard is that he shal lose issues to the king for his not appearance, wherfore it semeth not inconuenient nor against conscience, though the law be that those issues shalbe leued of him in the reuerſion, for that the condition was secretly vnderſtood in the law to passe with the lease when the lease was made. And therefore it is for the lessor to beware & to prevent the daunger at the making of the lease, or els it shall be adiudged his own default. And then this particuler Maxime wherby such issues shalbe leued vpon him in the reuerſion is a particuler exception in the law of England from the general maxime that thou hast remembred before, y^e is to say, that where ij. titles run together, that the eldest title shalbe preferred, & so in this case the general maxime in this point shal hold no place, neither in law, nor in conscience, for by this particuler Maxime the strength of the generall maxime is restrained to euery intent, that is to say, aswel in law as in conscience.

The

The 23. Chapter

¶ The third question of the Student.

Cap. 23.

If a Tenant for terme of life, or for terme of
yeres do wast whereby they be bound by the
lawes to yeld to him in the reuersion treble da=
mages, & so shal forfeit the place wasted, whe=
ther is he also bound in conscience to pay those
damages, & to restore that place wasted imme=
diatly after the wast done, as he is in the single
damages: or that he is not bound thereto till
the treble damages, & place wasted, be recou=
red in the kings court? D. Before iudgement
giuen of the treble damages & of the place was=
ted he is not bound in conscience to pay them.
For it is vncertain what he should pay, but it
suffiseth that he be ready till iudgement be gi=
uen to yeld damages according to the value of
the wast, but after the iudgement giuen, he is
bound in conscience to yeld the treble dama=
ges, & also the place wasted. And the same law
is in all statutes Penall, that is to say, that no
man is bound in conscience to pay the penaltie
till it be recovered by the law. S. Whether may
he that hath offended against such a statute Pe=
nal defend the action and hinder the iudgment
to the intent he should not pay the penaltie,
but onely single damages? D. If the action be
taken rightwisely according to the Statute
and vpon a iust cause, the defendant may in no
wise defend the action, vnlesse he haue a true
dilatorie matter to pleade, which shoulde be
hurtfull to him if he pleaded not, though he be
not

not bound to pay the penaltie till it bee reco-
nered.

¶ The fourth question of the
Student.

Cap. 24.

¶ If a man enfeoffe other in certeine land vpon
condition that if he enfeffe any other, that it
shalbe lawfull for the feoffor & his heires to re-
enter &c. Whether is this condition good in co-
science though it be void in the law? D. What
is the cause why this condition is void in the
law? S. The cause is this, by the law it is inci-
dent to euery state of fee simple, that he þ hath
the estate, may lawfully by the law and by the
gift of the feoffor, make a feoffement thereof,
And then whē the feffor restraineth him after,
that hee shall make no feoffement to no man
against his owne former graunt, and also a-
gainst the purty of the state of a fee simple, the
law iudgeth the condition to be void, but if the
condition had bin, that he should not haue en-
fessed such a man, or such a man, that condition
had bin good, for yet he might infesse other.

D. Though the said condition be against the
effect of the state of a fee simple, and also against
the law. Neuertheles it is not against the in-
tent that the parties agreed vpon, & that at the
time of the livery. And forasmuch as the intēt
of the party was, that if the feoffee infessed any
man of the land, that the feoffor should enter,
and to that intent the feoffee toke the state and
after

The 24. Chapter.

after break the intent, it semeth that the lād in conscience should returne to the feoffor. S. The intent of the parties in the lawes of England is void in many cases, that is to say, if it be not ordred according to the law. And if a mā of his meere motion without any recompence intending to giue lands to another, & to his heires make a deed vnto him, whereby he giueth him those lands, to haue & to hold to him for euer, intending that by the word (for euer) the lessee should haue the land to him & to his heires, in this case his intent is void, & the other shall haue the land onely for terme of life. Also if a man giue lands to another & to his heires for terme of xx. yerres, intending that if the lessee die within the terme that thē his heires should enioy the land during the terme: In this case his intent is void, for by the law of the realme al chattels real & personal shal go to the executors, & not to the heire. Also if a man giue lāds to a man and to his wife, & to the third persō, intending that euery of them should take the third part of the land as iij. common persons should, his intent is void, for the husband & the wife as one person in the law shall take onely the one halfe & the iij. person the other halfe, but these cases be alway to be vnderstood wher the said estates be made without any recompence. And forasmuch as in this principal case, the intent of the feoffor is groundred against the lawe, and that there is no recompence appointed for the feoffement, me thinketh that the feoffour hath neither right to the lande by law or conscience, for if he should haue it by con=

conscience that conscience should be grounded
 vpon the law of reason, and that it cannot, for
 conditions be not grounded vpon y^e law of rea-
 son, but vpon the Maximes & customes of the
 realme, & therefore it might be ordeined by sta-
 tute that al conditions made vpon land should
 be void. And when a condition is void by the
 Maximes of the law, it is as fully void to e-
 uery intent, as if it were made void by statute,
 & so me thinketh that in this case the feoffour
 hath no right to the land in law noz in consci-
 ence. D. I am content thy opinion stand til we
 shall haue hereafter a better leisure to speake
 farther in this matter.

¶ The fifth question of the
 Student.

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I f a fine with Proclamation be leuied accor-
 ding to the statut, and no claime made within
 y^e peres &c. whether is the right of a straunger
 extincted thereby in conscience, as it is in the
 law? D. Upon what consideration was that
 statute made? S. That the right of lands and
 tenements might be the moze certainly know-
 en and not to be so vncertain as they were be-
 fore that statute. D. And when any law of mā
 is made for a cōmon wealth, or for a good peace
 & quietnes of the people, or for any inconue-
 nience or hurt to be saued from them, that law
 is good, though percase it extinct the right of
 a straunger, and must be kept in the Court of
 conz

The 25. Chapter.

conscience, for as it is said before in Cha. 4. By
lawes rightwisely made by man, it appeareth
who hath right to the lands & goods, for what
soever a man hath by such a lawe hee hath it
rightwisely. And whatsoever he holdeth a-
gainst such a lawe he holdeth vnrightwisely, &
furthemoze it is said there, all the lawes made
by man which be not contrary to the lawe of
God must be obserued & kept, & that in consci-
ence. And he that dispiseth the, dispiseth god,
& he that resisteth them, resisteth God, also it
is to be vnderstood, that possessions & the right
thereof be subiect to the lawes, so that they
therefoze with a cause reasonable may be tran-
slated and altred from one man to another, by
the act of the lawe. And of this consideration
that lawe is grounded that by a contracte made
in faires & markets, the property is altered, ex-
cept the property be to the king, so that the
buiher pay toll, or do such other things as is ac-
customed there to be done vpon such contracts,
& that the buier knoweth not the former pro-
perty. And in y^e lawe Ciuil there is a like lawe,
that if a man haue another mans good with a
title iij. pere, thinking that he hath right to it,
he hath the very right vnto the thing, and that
was made for a lawe to the intent that the pro-
perty and right of thinges should not be vn-
certain, and that variance and strife should not
bee among the people. And forasmuch as the
sayd statute was ordeined to giue a certayn-
tie of title in the landes and tenementes com-
prised in the fine, It seemeth that that fine
extinded the title of all other, as well in

conscience as it doth in þe law. And ſith I haue
 answered to thy question: I pray thee let me
 know thy mind in one question concerning tai-
 led lands, & then I will trouble thee no farther
 at this time.

A question made by the Doctor, how certaine
 recoveries that bee vsed in the kings courts
 to defeate tailed land, may stand
 with conscience,

Cap. 26.

I haue heard say, that when a man that is sei-
 sed of landes in the taile selleth the lande,
 That it is commonly vsed that he that buieth
 the land shal for his suerty, & for the auoiding
 of the taile in that behalfe, cause some of his
 friends to recouer the said lands against the
 said tenant in taile: which recovery as I haue
 bin credibly enformed shalbe had in this man-
 ner: the demaundants shal suppose in their
 writ & declaration that the tenant hath no en-
 tre, but by such a stranger as the buier shal list
 to name & appoint, where in deed the deman-
 dants neuer had possession thereof nor yet the
 said stranger. And therupon the said tenant
 in taile shal appere in the Court, & by assent of
 the parties, shal vouch to warrant one that he
 knoweth well hath nothing to yeeld in value:
 And the vouchee shal appere & the demandants
 shal declare against him, and thereupon he shal
 take a day to emparle in the same terme and at
 that day by assent and couyn of the parties he

¶ 1.

shal

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That make default, vpon which default because
 it is a default in despite of the Court, the de-
 mandants that haue iudgement to recouer a-
 gainst the tenant in taile, and he ouer in value
 against the vouchee, and this iudgment and re-
 couery in value, is taken for a barre of the taile
 for ever, how may it therfore be taken that the
 law standeth with conscience, that as it seemeth
 alloweth & fauoureth such fained recoveries?
 S. If the tenant in taile sell the land for a cer-
 taine summe of mony as is agreed betwixt the
 at such a price as is commonly vsed of other
 landes, and for the suerty of the sale suffereth
 such a recovery as is aforesayde, what is the
 cause that moueth thee to doubt whether the
 said contract or the recovery made thereupon,
 for the suertie of the buter that hath truly
 paid his money for the same, should stand with
 conscience? D. Two things cause me to doubt
 therein, one is for that, that after our Lord had
 giuen the land of behest to Abraham and to his
 seed, that is to say, to his children in posses-
 sion alway to continue he said to Moyse as it
 appeareth Leuit. 25. the land shall not be solde
 for ever, for it is mine, And then our Lord as-
 signed a certain maner how the land might bee
 redeemed in the yere of Iubilie if it were solde
 before: and forasmuch as our Lord would
 that the lande so giuen to Abraham and his
 children should not be sold for ever, it seemeth
 that he doth against the ensample of God, that
 alieneth or selleth the lande that is giuen to
 him and to his children as landes entailed be
 giuen. Another cause is this: it appeareth by
 the

the commaundement of God that thou shalt not couet the house of thy neighbour &c. And if that concupiscence be prohibited, more stronger then the vnlawfull taking and withhol- ding thereof is prohibited: and forasmuch as tailed land when the Ancestor is dead, is a thing that of right is belonging to his heire for that he is heire according to the gift, how may the land with right of conscience be holden from him?

S. Notwithstanding the prohibition of Almighty God, whereby the lande that was giuen to Abraham and to his seede might not be aliened for ever, yet lands wth walled towne might lawfully bee aliened for ever except the landes of the Leuites, as it appeareth in the said Chapter of Leuitic. xxv. And so it appeareth that the said prohibition was not generall for every place and that amonge the Iewes. And it appeareth also that it was giuen onely for Abraham and his children, and so it was not generall to all people. And it appeareth also that it extended not but onely to the land of promise as it appeareth by the wordes of the sayd Chapter, where it is said thus, all the region of your possession shall be solde vnder the condition of redeeming, whereby appeareth that landes in other Countries bee not bounde to that condition, and as they be not bounde to that condition, by the same reason it followeth that they be not bounde to the same succession. Therefore that sayd Lawe that will that the lande giuen to Abraham and to his seede shal not be sold for ever

f.ij.

bindeth

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bindeth no land out of the land of promise, & some men will say, that sithen the passion of our Lord was promulgate and knowen, it bindeth not there. And to the second reason which is grounded vpon the commaundement of God, It must needs be granted that it is not lawfull to any man unlawfully to couet the house of his neighbor, and that then more stronger he may not unlawfully take it from him: but then it remaineth for thee yet to proue howe in this case this tailed land that is sold by his ancestor, and whereof a recoverie is had recozded in the kings court, may be said the lands of the heire. D. That may be proued by the law of the Realme, that is to say by the statute of V Vestminster the second Cap. 1. Where it is said thus. The will of the giuer expressely contained in the deed of his gift, shalbe from henceforth obserued, so that they to whom the tenementes be so giuen shall not haue power to alien, but that the lands after their death shall remaine to the issue or retourne to the donour if the issue faile, By the which statute it appeareth evidently that though they to whom the tenementes were so giuen, aliened them away, that yet neuerthelesse they in law and conscience by reason of the said statute ought to remaine to their heires according to the gift, for it is holden commonly by all Doctors that the commaundements and rules of the law of man or of a positue law that is lawfully made, binde all that be subiects to the law according to the minde of the maker, and that in the Court of conscience.

S. Doeſt thou thinke that if a man offend a-
gainſt a ſtatut Penall that he offendeth in con-
ſcience? Admit that he do it not of a wilfull
diſobedience, or that he wil not obey the law,
for if he do it of diſobedience I think he offen-
deth. D. If he be but onely a ſtatute that is
called Populare, it bindeth not in conſcience to
the payment of the penaltie, till it be recou-
ered by the law. And then it doth bind in con-
ſcience: but if a ſtatute be made principally to
remedie the hurt of one partie, and for that
hurt it giueth a penaltie to the partie, in that
caſe the offendour of the ſtatute is bound im-
mediatly to reſtore the damages to the value
of the hurt, as it is vpon the ſtatute of Swaſt,
but the penaltie aboue the hurt he is not bound
to pay till iudgement bee giuen as it is ſayde
before: but ſtatutes by the which it is allig-
ned who ſhall haue right or propertie to theſe
lands and tenements, or to theſe goods or cat-
tels, if it be not againſt the law of God nor a-
gainſt the law of reaſon, binde all them that be
ſubiect to the law, in law and conſcience, and
ſuch a ſtatute is the ſtatut of VVeſt. 2. where-
of we haue treated before, wherefore it muſt be
obſerued in conſcience.

S. But ſome holde that the ſtatute of weſt-
minſter the ſecond was made of a ſingularitpe
and preſumption of many that were at the ſaid
Parliament for exalting and magnifying of
their owne bloud, and therefore they ſay that
that ſtatute made by ſuch a preſumption bin-
deth not in conſcience.

D. It is very perillous to iudge for certaine
that

f. iij.

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that the said Statute was made of such presumption as thou speakest of, for there be many considerations to pzooue that the sayd Statute was not made of such presumption, but rather of a berie good minde of all the Parliament, oz at the least of the moze part thereof, and for the common wealth of all the realme, and first in the king the which in the said Parliament was the head and most chiefe and pzinicipal part of the Parliament (as he is in euery Parliament) cannot be noted to such entent. For it is not necessarie nor it was not then in vse, that lands of the Crowne should be entailed, and in spiritual men ne yet in certaine Burgeses and Citizens of the said Parliament which at that time had no land, there can be noted no such singularity, nor yet in the Noble men and gentlemen nor such other as were of the said Parliament and had landes and tenements. It is not good to iudge in certaine that they did it of such a presumption, but it is good and expedient in this case as it is in other cases that be in doubt to hold the surer way, and that is that it was made of charitie, to the intent that he nor the heires of him to whom the land was giuen shoulde not fall into extreme pueritie, and thereby happily to run into offence against God: and though it were true as they say, that it was not made of charitie, but of presumption and singularity as they speak off: Neuerthelesse forasmuch as the Statute is not against the law of God nor against the law of Reason, it must be obserued by all them that be subiectes vnto that law.

lawe. For as Iohn Gerson in the treatise
 that he intituled in latin, Devita spirituali ani-
 ma, the fourth lesson, and the third corollaries
 saith that God will that makers of lawes
 Judge onely of outward thinges and reserve
 secret thinges to him. And so it appeareth that
 man may not Judge of the inward intent of
 the dedde, but of such thinges as be apparant
 and certaine, but it is not apparant that there
 was any such corrupt intent in the makers of
 the said statute, how may it therefore be said
 that that law is good or rightwise, that not
 only suffereth such thinges against the statute,
 but also against the commaundement of God?
 S. To that some aunswere and say, that when
 the lande is solde and a recouerie is had there-
 upon in the kings Court of Record, that it
 suffiseth to barre the taile in conscience, for
 they say that as the taile was first ordeined
 by the law, so they say that by the lawe it is
 adnulled againe. D. We thou thy selfe Judge
 if in that case there be like authoritie in the
 making of the taile, as there is in the adnul-
 ling thereof, for it was ordeined by authoritie
 of Parliament, the which is alway taken for
 the most high Court in this Realme before a-
 ny other, & it is adnulled by a false supposel for
 that, that they that be named demaundantes
 should haue right to the land, where in trouth
 they had neuer right thereto, whereupon fol-
 loweth a false supposel in the writ, and a false
 supposel in the declaration and a voucher to
 warrant by couin of such a person as hath no-
 thing to yeld in value, & thereupon by couin

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and collusion of the parties followeth by default of the vouchee, by the which default the iudgment shalbe giuen. And so al the iudgment is deriued & grounded of the vnttrue supposel & couin of the parties, wherby the law of the realme that hath ordeined such a writ of Entre to help them that haue right to lāds or tenemētis is defrauded, the court is deceiued, the heire is disherited, & as it is to doubt, the buyer & the seller, their heires & assigns hauing knowledg of the taile be bound to restitution, & verely I haue heard many times, that after the law of the realme such recoveries should be no barre to the heire in the tail, if the law of the realme might be therein indifferently heard. S. I cannot see but that after the law of the realme it is a barre of the taile, for when the tenant in taile hath vouched to warranty, & the vouchee hath appeared & entred into the warranty, & after hath made default in despite of the court, whereupon iudgement is giuen for the demandant against the tenant, & for the tenāt that he shal recouer in value against the vouchee, if the heire in the taile should after bzing his Formedon & recouer the lands entailed, and after the vouchee purchaseth lands, then should the heire also haue execution against him to the value of the lands entailed as heire to his ancestor that was tenant in the first action, and so he should haue his owne lands, & also the lands recovered in value, & therefore because of the presumption that the vouchee may purchase landes after the iudgment, some be of opinion that it is in the law a good barre of the tail. D. I suppose that

that in that case thou hast put that the bouche may barre the heire in taile of his recovery in value because he hath recovered the first lands. Neuertheles I wil take a respit to be aduised of that recovery in value. And if thou can yet shew me any other consideration why the said recoveries should stand with cōscience, I pray thee let me heare thy conceipt therein, for the multitude of þe said recoveries is so great that it were great pittie that al should be bound to restitution that haue lands by such recoveries, with there is none (as farre as I can heare) dispose them to restore. S. Some men make an other reason to proue that the said recoveries should be sufficiēt by the law to auoid the statute of west. then & if they be sufficient therto, they be sufficiēt in cōscience. D. What is their reason therein? S. In the vij. yere of H. 8. Cap. 4. among other things it is enacted, that al recoverers their heires and assignes may aduowse and iustifie for rentes seruices, and customes by them recovered, as they against whom they recovered might haue done. And then they say that when the Parliament gaue to such recoverers authoritie to aduowse and iustifie for such rents, customes, and seruices as they recovered, that the intent of the Parliament was that such recoverers should haue right to that, for the which they should anowse or iustifie, for els they say that it should be in vaine to giue them such power, and that the Parliament should else be taken in maner as fortifiers of wrongfull title, and so they say that such recoverers by reason of the said Statute haue right

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right by the law. D. That statute as it seemeth
was made onely to giue to the recouersers a
fourme to aduowe and iustifie which they had
not before though they had recovered vpon a
good title. And the cause why they had no
fourme to aduowe or iustifie before the sayde
statute was, forasmuch as the recouersers did
not by the pretence of their action affirme the
possession of him or them against whom they
recovered, nor claimed not by them, but rather
disaffirmed and destroyed their estate. And
therefore they cannot alledge any continuance
of their title by them, as they may that haue
rents or seruices, or such other of the graunt
of other by deede or by fine. And therefore as it
seemeth the most principall intent of the sta-
tute was, that such recoveries should aduowe
and iustifie for rents seruices and customes as
they should or might do that had them by fine
or deed not hauing any respecte as it seemeth
whether they recovered against tenant in fee
simple or in fee taile, nor whether the recou-
ries were had vpon a rightful title. And ther-
fore as me seemeth the said statute neither af-
firmeth nor disaffirmeth the title of recoveries
wherby they do aduow, for if a mā had right
before the recovery the right shoulde remaine
vnto him notwithstanding the said statute, & so
me seemeth that the title of them that haue the
landes entailed by such recoveries is nothing
fortified nor affirmed by the said statute but
that they are in the same case as they were be-
fore, what thinkest thou therein? S. This mat-
ter is great for as thou saiest there be so many
that

that haue tailed lands by such recoveries, that it were great pity & heauines to condempne so many persons and to iudge that they al were bound to restitution. For I thinke there be but few in this realme that haue lands of any notable value, but that they or their anceltors, or some other by whom they claime, haue had part therof by such recoveries. In somuch that Lords Spirituall and Temporal, Knights, Squires, riche men and poore, Monasteries, Colledges and Hospitals haue such lands, for such recoveries haue bin vsed of long time, who may thinke therefore without great heauinesse that so many men shoulde be bound to restitution and that yet as thou saiest, no man disposeth him to make restitution: And so I am in a maner perplexed and wote not what to say in this case, but that yet I trust that ignorance may excuse many persons in this behalfe. D. Ignorance of the dead may excuse, but ignorance of the law excuseth not, but it be inuincible, that is to say, that they haue don that in them is to know the trouth, as to con-
saile with learned men, and to aske them what the law is in that behalfe, and if they aun-
swere them that they may do this or that law-
fully, then they be thereby excused in consci-
ence, but yet in mans law they be not thereby
discharged, but they that haue taken vpon the
to haue knowledge of the law be not excused
by ignorance of the lawe, ne no more are they
that haue a wilfull ignorance and that would
rather be ignorant then to knowe the trouth.
And therefore they will not dispose them to
aske

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aske any Counsaile in it, and if it be of a thing
 that is against the law of God or the lawe of
 reason, no man shall be excused by ignorance,
 and so there be but few that be excused by ig-
 norance. S. What then shall we condempne so
 many and so notable men. D. We shall not
 condempne them but we shall shew them their
 perili. S. Yet I trust their daunger is not so
 great that they should be bound to restitution.
 For John Gerson saith in the said booke cal-
 led *De vnitae ecclesiastica consideratione secunda*,
quod communis error facit ius: That is to say, A
 common erroz maketh a right, of which wordes
 as it seemeth some trust may be had, y though
 it were fully admitted the sayde recoveries
 were first had vpon an vnlawfull ground and
 against the good order of conscience, that yet
 neuerthelesse forasmuch as they haue bin bled
 of long time so that they haue bin taken of di-
 uers men that haue bin right well learned, in
 maner as for a lawe, that the buyers partly
 be excused so that they be not bound to restitu-
 tion. And mozeouer it is certaine that the
 statute of VVestminster the second, nor none o-
 ther statute made by man cannot be of greater
 valoz or strength, then was the bond of Ma-
 trimony y was ordeined of God. And though
 that bonde of Matrimony was indissoluble,
 yet neuerthelesse Moises suffred a bill of refusel
 of the lewes, which in latin is called *Libellum*
repudij, and so they might thereby forsake
 their wiues, as it appeareth Deutro. xxij. and
 therefore like as a dispensation was suffered
 against that bond, so it seemeth it may bee a-
 gainst

gainst this statute. D. As to that reason that thou hast last made of a bill of refusell, let all purchasors of land heare what our Lord saith in the Gospell of the Iewes, of that bill of refusell. Mathewe xix. Where he saith thus, For the hardnes of your harts Moyses suffered you to leaue your wines, for at the beginning it was not so: of which words Doctours hold commonly that though such a bill of refusell was lawfull so that they that refused their wines thereby, should be without paine in the law, that yet it was neuer lawfull so that it should be without fine. And so likewise it may be said in this case that such recoveries be suffered for the hardnes of the hartes of Englishmen, which desire land and possession with so great greedines that they cannot be withdrawn from it neither by the law of God nor of the Realme. And therfore the rich men should not take the possessions of poore men from them by power, without colour of title, that is to say, eyther by open Disseisin, or by the onely sale of the tenant in taile, and so to holde them against the expresse words of the statute, such recoveries haue bin suffered. And though for their great multitude they may happely be without paine as to the law of the Realme: yet it is to feare that they be not without offense, as against God, and as to the other reason, that a common error should make a right, those words as me seemeth be to be thus vnderstood, that a custom bled against the law of man shall be taken in some countries for law, if the people be suffered so to continue. And yet some men call such
a cna

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a custome an error because that the continuance of that custome against the law was partly an error in the people, for that that they would not obey the law that was made by their superiours to the contrary of that custome, but it is to be understood that the said recoveries though they haue bin long vsed, may not bee taken to haue the strength of a custome, for many aswell learned as vnlearned haue alway spoken against them and yet do. And furthermore as I haue heard say a custome or a prescription in this Realme against the statutes of the realme preuaile not in y^e law. S. Though a custome in this Realme preuaileth not against a statute as to the lawe, yet it seemeth that it may preuaile against the statute in conscience, for though ignorance of a statute excuseth not in the law, neuertheles it may excuse in conscience and so it seemeth that it may doe of a custome. D. But if such recoveries cannot be brought into a lawfull custome in the law, it seemeth they may not be brought into a custome in conscience, for conscience must alway be grounded vpon some law, and in this case it cannot be grounded vpon the law of reason, nor vpon the law of God, and therefore if the lawe of man serue not, there is no ground whereupon conscience in this case may be grounded, and at the beginning of such recoveries they were taken to be good because the law should warrant them to be good, and not by reason of any custome, and so if the reason of the lawe will not serue in the recoveries, the custome cannot helpe, for an euill custome

is to be put away. And therefore me seemeth that the recoveries be not without offence against God, though happely for their great multitude, and that there should not be as it were a subversion of the inheritance of many in this Realme aswell of spirituall as temporall, they bee without paine in the Lawe of the Realme, except such recoveries as by the common course of the law be voidable in the law by reason of some vyle or of some other special matter: but what paine that is I wil not temerously iudge, but commit it to the goodness of our Lord whose Judgements be verie deepe and profound, nor I will not fully affirme that they that haue lands by such recoveries ought to be compelled to restitution, but this seemeth to me to be good Counsaile, that everie man hereafter hold that is certaine and leaue that is vncertaine, & that is that he keepe himselfe from such recoveries, and then he shal be free from all scrupulousnes of conscience in that behalfe.

S. It semeth that in this question thou ponderest greatly the said statute of Westminster the second, and that though it be but onely a law made by man, that yet forasmuch as it is not against the law of reason, nor the law of God, thou thinkest that it must bee holden in conscience, and over that as it seemeth thou art somewhat in doubt whether those recoveries bee any barre to the heire in the taile by the law of the Realme, vnlesse that he haue in value in deede vpon the voucher, and that thou wilt therupon take a respite or thou shew thy
ful

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ful minde therein, and in likewise thou thinkest as I take it that those recoveries cannot be brought into a custome, but that the longer that they be suffered to continue if they be not good by the law, the greater is the offence against God. And therefore thou ponderest little that custome, but yet thou agreest that it is good to spare the multitude of them that be past, least a subuersion of the inheritance of many of this realme might follow, & great strife and variance also, if they should be adnuiled for the time past, except there be any other special cause to auoid the by the law as thou hast touched in the last reason, but thou thinkest that it were good that from henceforth such recoveries should be clerely prohibited & not be suffered to be had in vse as they haue bin before, & thou counsailest all men therefore to refrain themselves from such recoveries hereafter.

D. Thou takest well that I haue said, and according as I haue ment it. S. Now I pray thee, sith I haue heard thy question of these recoveries according to thy desire, & thou wouldest answer me to some particuler questions concerning tailed lands, whereof thou hast at this time giuen vs occasion to speak. D. Shew me these questions, & I wil shew thee my mind therein with good wil.

¶ The first question of the Student concerning tailed lands.

Cap. 27.

If a disseisor make a gift in the taile to John at Stile, & J. at S. for the redeeming of the title of the disseisor, agreeth with him that he shal haue a certain rent out of the same land to him & to his heires, & for the surety of the rent it is deuised that the disseisor shall release his right in the land &c. & that such a recovery as we haue spokē of before, shalbe had against the said J. at S. to the vse of the paiement of the said rent and of the former taile, whether it standeth that recovery wel with conscience or not as thou thinkest? D. I suppose it doth, for it is made for the strength and surety of the taile, which the disseisor might haue clerely defeated & auoided if he would, & therefore as I thinke if the said J. at S. had granted to the disseisor, only by his deed a certain rent for the releasing of his title, that graunt should haue bound the heires in the taile for ever. And then if the disseisor for his more surety will haue such a recovery, as before appeareth, it seemeth that recovery standeth with good conscience. S. It seemeth by thy opinion is right good in this matter. And also it appeareth that with a reasonable cause, some particuler recoveries may stand both with law, & conscience to barre a taile.

¶ The second question of the Student.
concerning tailed lands.

Cap. 28.

If a Tenant in taile suffer a recovery against him of his lands entailed, to the entent that
G. j. the

The 28. Chapter.

the recoverer shall stand seised thereof to the use of a certaine woman who he intendeth to take to his wife, for terme of life, and after to the use of the first taile, and after he marieth the same woman, whether standeth that recovery with conscience, though other recoveries upon bargaines and sales did not: D. It seemeth yes, for though the statute be that they to whom the tenements be so given, should not have power to alien, but that the lands after their death shoulde remaine to their issues, or reuert to the donors, if the issues failed: yet if he to whom the landes were so given take a wife, and dieth seised without heire of his body, and the donour enter, the woman shall recover against him the third part to hold in the name of her dowry for terme of her life, though the taile be determined, and the same law is of tenant by the curtesie: that is to say, of him that happeneth to marry one that is an heirrix of the land entailed, and they have issue, the wife dieth, and the issue dieth, he shall holde the lands for terme of his life, as tenant by the curtesie, notwithstanding the words of the statute, which say that after the death of the tenant in taile without issue, the lands shall reuert to the donor, and I think the cause is because the intent of that statute shall not be taken, that it intended to put away such titles as the law should give, by reason of the taile, and so it seemeth that a like entent of the statute shall be taken for Jointors, for els the statute might be sometime a letting of Matrimony, and it is not like that the statute intended so,

so, and therefore it seemeth that by the onely
 deede of the tenant in taile, a Jointour may bee
 made by the intent of the statute, though the
 wordes of the statute serue not expressely for it,
 for many times the intent of the letter shall be
 taken, and not the bare letter, as it appeareth
 in the same statute, where it is said that he to
 whom the lands be giuen shall haue no power
 to alien, yet the same statute is construed that
 neither he nor his heires of his bodie shal haue
 no power to alien, & so me thinketh that such
 an intent shalbe taken here for sauing of ioin-
 toers. S. Truth it is, that sometime the intent
 of a statute shall be taken farther then the ex-
 presse letter stretcheth, but yet there may no
 intent be taken against the expresse wordes of
 the statute, for that shoulde be rather an in-
 terpretation of the statute then an exposition,
 and it cannot be reasonably taken, but that
 the intent of the makers of the sayde statute
 was, that the land should remaine continuall-
 ly in the heires of the taile, as long as the taile
 endureth, and there can no Jointour be made
 neither by deede nor by recovery, but that the
 taile must thereby be discontinued, and there-
 fore this case of Jointour is not like to the said
 cases of Tenant in Dowry, or tenant by the
 Curtesie: for the title of Dowry, and of Te-
 nancie by the Curtesie groweth most spe-
 cially by the continuance of the possession in
 the heires of the Taile, but it is not so of ioin-
 toers, and therefore by the onely deede of the
 tenant in the Taile, there may no Jointour
 be lawfully made against the expresse wordes
 of

The 29. Chapter.

of the statut. And if there be any made by way of recovery, then it seemeth that it must be put vnder y^e same rule, as other recoveries must be of lands entailed.

¶ The third question of the Student concerning tailed land,

Cap. 29.

If John at Moke being seised of lands in fee, of his mere motion make a feoffment of certayne landes to thintent that the feoffees shall thereof make a gift to the said Jo. at Moke to haue to him and to his heires of his body, and they make the gift according. And after the said J. at Moke falleth into det, wherefore he is taken and put in prison, and thereupon for payment of his debts, he selleth the same lād, and for suerty of the buier he suffreth a recovery to be had against him in such maner as before appeareth, whether standeth that recovery with conscience or not? D. I would here make a litle digressiō to aske thee another question or that I make answer to thine: that is to say, to seele thy mind how that laswe by the which the body of the debtoz shal be taken and cast into prison there to remain til he haue paid the debt, may stand with conscience, specially if he haue nothing to pay it with, for as it seemeth if he will relinquish his goods, which in some lawes is called in Latin Cedere bonis, that he shall not be imprisoned, and that is to be vnderstande most specially if he be fallen into pouerty

poverty and not through his owne defaulte.
 S. There is no law in this realme that the de-
 fendant may in any case Cedere bonis, & as me
 seemeth if there were such a law, it should not
 be indifferent, for as to the knowledge of him
 that the money is owing to, the debtor might
 Cedere bonis, & is to say, relinquish his goods,
 and yet retaine to himselfe secretly great ry-
 ches. And therefore that law in such case see-
 meth more indifferent and righteous that com-
 mitteth such a debtor to the conscience of the
 plaintife to whom the money is owing, then
 the committing him to the conscience of him
 that is the debtor: for in the debtor some de-
 fault may be assigned, but in him to whom the
 money is owing may be assigned no default. D.
 But if he to whom the debt is owing, know-
 eth that the debtour hath nothing to pay the
 debt with, and that hee is fallen into pover-
 tie by some casualty, and not through his owne
 default both the law of England hold, that he
 may with good conscience keepe the debtor stil
 in prison till he be payd: S. I pray verely, but it
 thinketh more reasonable to appoint the liber-
 tie and the iudgment of conscience in that case
 to the debtee then to the debtor, for the cause
 before rehearsed. And then the debtour, if he
 knew the truth, is (as thou hast said) bound in
 conscience to let him go at liberty though hee
 be not compellable thereto by the lawe. And
 therefore admitting it for this time, that the
 law of England in this point is good and iust,
 I pray thee that thou wilt make aunswere to
 my question: D. I will with good will, and
 there=

The 9. Chapter.

therefore as me seemeth, forasmuch as it appeareth that the said gift was made of the meere libertie and free wil of the said John at Doke, and without any recompence, that therefore it cannot be otherwise taken, but that the intent of the said J. at Doke, aswell at the time of the said feoffement, as at the time that hee received againe the said gift in the taile, was, that if he happened afterwards to fall into po= uertie, that he might alien the said land to re= lieue him with, for how may it be thought that a man will so much ponder the wealth of his heire, that he wil forget himselfe: and so it seemeth that not only the said recovery standeth with conscience, but also if he had made only a feoffement of the land, the feoffement should be in conscience a good barre of the taile, but if the said feoffement and gift had bin made in consi= deration of any recompence of money or for any matrimony or such other, then the feoffement of the said J. at D. should not bind his heire, & if he then suffered any recovery therof then the recovery shoulde be of like effect as other recoveries whereof we have treated before, & that which I said it was good to favour rather for their multitude, then for the conscience: & the same law is that if the sonne & the heire of the said J. at Doke in case that the said gift was made without recompence, alien the lande for povertie after the death of his father, the recovery bindeth not but as other recoveries doo, for it cannot be thought that the intent of the father was, that any of his heirs in taile should for any necessity disherite all other heirs in
taile

tail & should come after him, but for himself me thinketh it is reasonable to iudge in such manner as I haue said before. S. And though the intent of the said Jo. at M. when he made the said feoffement, and when he tooke againe the said gift in taile, were that if he fell in neede that he might alien, yet I suppose that he may not alien though percase for the more suretie he declared his intent to be such vpon the liuerie of seisin: for that intent was contrarie to the gift that he freely tooke vpon him, & when any intent or condition is declared or reserved against the state that any man maketh or excepteth: then such an intent or condition is voide by the lawe, as by a case that hereafter folloiweth will appeare, that is to say. If a man make a feoffement in fee, vpon condition that the feoffee shall not alien to any man, that condition is voide, for it is incident to every state of the fee simple that he is so seised may alien. And like as in a fee simple there is incident a power to alien, so in a state taile there is a secrete intēt vnderstood in the gift, & no alienatiō shalbe made. And therfore though the intent of the said J. at M. were that if he fell into pouerty that he might sel, and though he at the taking of the gift openly declared his intent to be so, yet the intent should be voide by the law as me seemeth, & if it be void by the law, it is also void in cōscience, and so the said recovery must be taken in this case to be of the same effect, as recoveries of other lands intailed be, & in none other maner.

The 30. Chapter.

¶ The fourth question of the Student concerning Recoueries of Enhancements intailed.

Cap. 30.

If an Annuity be granted to a man to haue
¶ & to perceiue to the graunter, & to the heires
of his body of the cofrers of his grantor. And
after the graunter suffreth a recovery against
him in a writ of Entre, by the name of a rent in
dale of like summe as the Annuity is of, with
bouchers & iudgment after the common course
and both parties intend that the Annuity shal
be recovered: whether shall the recovery binde
the heire in taile of his Annuity? D. what if it
were a rent going out of lande, of what effect
should the recovery be then? S. It should be
then of like effect as if it were of land. D. And
so it seemeth to be of this Annuity, for as mee
thinketh, a rent, and Annuity be of one effect,
for the one of them shalbe paid in ready mony
as the other shal. S. Truth, and yet there bee
many great diuersities betwixt them in the
law. D. I pray thee shew me some of those di-
uersities. S. Part I shall shew thee, but I
wote not whether I can shewe thee all, but
first thou shalt vnderstand that one diuersitie
is this. Every rent, be it Rent seruice, Rent
charge, or rent secke, is going out of land, but
an Annuity goeth not out of any lande, but
chargeth onely the person, that is to say, the
grauntour, or his heires that haue Assets by
discent, or the house if it bee granted by a
house

house of Religion to perceiue of their cofrers. Also of an annuity there lyeth no action, but onely a Writ of Annuitie against the grauntour, his heires, or successors, & that writ of Annuity lieth neuer against the pernour, but onely against the grauntor or his heires, but of a rent, the same actions may lye, as do of lande as the case requireth, and it lieth sometime of rent against the tenant of the ground, & sometime against the pernour of the rent, that is to say, against him that taketh the rent wrongfully, & sometime against neither, As of a rent service Writ may lie for the Lord against the Mesne & the Disseisor, or sometime against the Mesne only, if he did also the Disseisin. Also an annuity is neuer takē for an Assets because it is no freehold in the law, ne it shall not be put in execution vpon a statute Marchant, statute Staple, ne Elegit as a rent may. And because the said writ of Entre lay not in this case of this annuity, & that it cannot be entered in the law to be the same Annuity, though it be of like summe with the annuity, ne though the parties assented and ment to haue the same annuity recovered by the said writ of Entre, therefore the said recovery is void in law and conscience, but if such a recovery be had of rent in a voucher ouer, then it shalbe taken to be of like effect, as recoveries of lands be in such manner as we haue treated of before.

¶ The fifth question of the Student concerning Tailed lands.

Cap.

The 31. Chapter

Cap. 31.

24. l. 3. f. 506.
f. 51. a.

If lands be given to a man and to his wife in the name of her Jointoz by the father of the husband, to have & to hold to them and to the heires of their two bodies begotten, and after they have issue & the husband dieth, & the wife alieneth the land, & against the statute of 11. H. 7. suffreth a recovery thereof to be had against her, to the vse of the buier, and after her Sonne & heire apparant that is heire to the taile releaseth to the recoverers by fine, & dieth having a brother on live, & after the mother dieth who hath right to the land, the buier, or y brother of him that released: D. What is thine opinion therein, I pray thee shew me. S. He seemeth that the buier hath right, for by the said Statut made in the xi. yere of H. 7. among other things it is enacted that if any woman which hath lands of the gift of her husband, or of the gift of any of the Ancestors of the husbände suffer any recoverie thereof against her by co-
.. uin, that then such recovery shalbe void, & that it shalbe lawfull to him that should have the land after the death of the woman to enter, & it to hold as in his first right, provided alway y that Statute shall not extend where he y should have the land after the death of the woman is agreeable to any such alienation or recovery, so that the agreement be of Recorde. And forasmuch as the heire in this case agreed to the said recovery by fine, which is one of the highest Records in the law, it seemeth that the buyer hath right against that heire that agreed and
against

against all that shalbe heire of the taile, and that not only by the said recouerie, but also by the said statute, whereby the said recouerie with assent of the heire is affirmed. D. Though the buier in this case haue right during the life of the heire that released, yet neuertheles, after his death his heir as it seemeth may lawfully enter: for the agreemenc whereof the statute speaketh, must as I suppose either be had before the recouery, or els at the time of the recouery, for if a title by reason of the said statute be once deuolute to the heire in the tail, then the right as me seemeth cannot be extinct nor put away by the onely fine of the heire, no more then if he had died, and the next heire to him had released to the buyer by fine, in which case the release could not extinde the right of the title, nor the right of entree that is giuen by the statute, and so as me seemeth, his next heire may therefore enter. S. As I perceiue altho doubt is in this case because the assent of the heire was after the recouerie, for if it had bin at the time of the recouery, as if the heire had bin douched to warrant in the same recouerie and he had entred, and thereupon the iudgment had bin giuen, thou agreeest well, that recouerie shoulde haue auoided the taile for ever.

Doctour. That is true, for it is in expresse wordes of the Statute, but when the assent is after the recouery, then mee thinketh it is not so, ne that the right of the first tail, which was reuqued by the sayde Statute, shall not be extinct by his fine, no more then it shall in other.

The 31. Chapter

other taile. S. I will be aduised vpon thy opinion in this matter, but yet one thing would I moue farther vpon this statute, and that is this: Some say, that by this statute all other recoveries that haue bin had ouer beside these recoveries of Jointors be affirmed, for they say, that sith the Parliament at the making of this statute knewe well that many other recoveries were then vsed and had, to defeate Tailles, and that it was like that they would so continue, which neuerthelesse the Parliament did not prohibite for the time to come as it did the said recoveries of Jointors: that it is therefore to suppose that they thought that they should stand with lawe and conscience: but because Jointors were made rather for the sauing of the inheritance of the husband then to destroy the inheritance, they say that the Parliament thought and iudged the alienations and recoveries of such Jointors to be against the law and conscience, and not the Alienations of other lands entailed, for if they had, they say that the Parliament would haue anoided recoveries of Tailed lands generally aswell as it did of Recoveries of Jointors. D. As to that opinion I will aunswere thee thus for this time, that though that the makers of the said estatute onely put away recoveries of Jointors, and not other recoveries, that yet it cannot be taken therefore that their intent was that the other recoveries shoulde stand good and perfect, for they spake then onely of Jointors because there was no complaint made in the Parliament at that time, but against

gainst recoveries had of Jointors, & therefore it seemeth that they intended nothing concerning other recoveries, but that they should be of the same effect as they were before, & no otherwise. And that will appeare more plainly thus: though the makers of the saide statute intended to put away & adnuil such recoveries as should be made of Jointors after a certaine day limited in the statute, that yet they intended not to auoid ne affirme such recoveries of iointors as were passed before that time: and if they intended not to auoid ne affirme the Recoveries had of Jointors before that time, the how can it be taken that they intended to put away, or affirme other recoveries that were passed before that time, & not of Jointors, that would not affirme, ne put away recoveries passed of Jointors before that time? And so as it seemeth, they intended to spare the multitude of them that were passed of both, & not to comfort any to take them after that time. S. I am content thy opinion stand for this time, and I will aske thee another question.

¶ The sixt question of the Student concerning Tailed lands.

Cap. 32.

I If tenant in tail be disseised, & die, & an ancestor collateral to h^e heir in tail release with a warranty, and dye, and the warranty descendeth vpon the heire in the taile, whether is he there

The 32. Chapter.

thereby barred in cōscience, as he is in the law. D. Because your principall intent at this time is to speake of recoveries & not of warranties, & also because it hath bin of long time takē for a pzincial maxime of the law, that it should be a barre to the heires aswel that claime by a fee simple, as by state taile, & for that also that it was not put away by the said statute of VV. 2. which ordeined the taile, I will not at this time make thee an aunswere therein, but will take a respit to be aduised. S. Then I pray thee yet oz we depart shew me what was the most principall cause that moued thee to moue this question of recoveries had of tailed lands. D. This moued me thereto. I haue perceiued many times that there be many diuers opinions of these recoveries, whether they stande with cōscience oz not, & that it is to doubt that many persons run into offence of conscience therby. And therefore I thought to feele thy mind in them, whether I could perceiue that it were clere, that they serued to bzeake the taile in law and conscience, oz that it were clerely against conscience so to bzeake the tail, oz that it were a matter in doubt, & if it appeared a matter in doubt, oz that it appeared that the matter were vsed clerely against conscience, thē I thought to do somewhat to make the matter appeare as it is, to the intent that they that haue the rule & charge ouer the people aswell the spiritual men as temporal men, should the rather endeuor them to see it reformed for the common wealthe of the people, aswel in bodie as in soule. For when any thing is vsed to the
dis-

displeasure of God, it hurteth not only the body, but also the soule. And tēporal rulers haue not onely cure of the bodies, but also of the soules, & shal answere for them if they perishe in their default: & because it seemeth by y^e more apparant reason that the tailies be not broken, ne fully auoided by the said recoveries, & that yet neuertheles the great multitude of them that be passed is right much to bee pondered, Therfore it were very good to prohibite them for tyme to come, to put asway such ambiguities & doubtys as ryse now by occasion of the said recoveries, & so they be put as snares to deceiue the people, & so wil they be as long as they be suffred to continue. And me thinketh verely that it were therfore right expedient that tailed landes should from henceforth either be made so strong in the law that the taile should not be broken by recovery, fine with proclamation, collateral warranty, nor otherwise: or els that all tailies should be made fee simple, so that euery mā that list to sel his lād, might sel it by his bare feffement & without any scruple or grudge of conscience, & then there should not be so great expences in the law, nor so great variance among the people, ne yet so great offence of conscience as there is now in many persons. S. Merely me thinketh that thy opinion is right, good, and charitable in this behalfe, And that the rulers be bound in conscience to looke vpon it, to see it reformed and brought into good order. And verely by that thou hast said therein thou hast brought me into remembrance that there be diuers like snares.

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The 32. Chapter.

concerning spiritual matters suffered among the people whereby I doubt that many spirituall rulers be in great offence against God. As it is of the point that spiritual men haue spoken so much of, that priests should not be put to answer before lay men, specially of felonies and murders, & of y^e statut of 45. E. 3. Cap. 3. where it is said that a Prohibition shall lie where a man is sued in the spirituall court for tithe of wood, y^e is aboue y^e age of xx. yere, by y^e name of Silua cedua as it hath bin don before, & they haue in open Sermons, & in diuers other open communications & counsels caused it to be openly notified & knowen, y^e they should be al accursed that put priests to answer, or that maintaine the said estatut, or any other like to it. And after when they haue right well perceiued that notwithstanding al that they haue don therin, it hath ben vsed in the same points throughe al the realme in like maner as it was before: The they haue set stil & let y^e matter passe, & so whē they haue brought many persons in great danger, but most specially them that haue giuen credence to their saying, & yet by reason of the old custome haue done as they did before, then there they left them, but verely it is to feare that there is to themselves right great offence thereby, that is for to say, to see so many in so great danger as they say they be, And to do no more to bring them out of it thē they haue dōe for it, if it be true as they say, they ought to stick to it wth effect in al charity, till it were reformed. And if it be not as they say, then they haue caused many to offend y^e haue giue credence to

And I beseech almighty God that some good man may so call vpon all these matters that we haue now commoned of, so that they that be in authoritie may somewhat ponder them, and to order them in such maner that offence of conscience grow not so lightly thereby hereafter as it hath done in times past. And verely he that on the crosse knewe the pprice of mans soule, will hereafter aske a right straight account of rulers for every soule that is vnder them, and that shall perish throught their default.

Thus haue I shewed vnto thee in this lit-
tle dialogue how the law of England is groun-
ded vpon the Law of reason, the law of God,
the general customes of the Realme, and vpon
certeine principles that be called Maximes,
vpon the particuler Customes vsed in diuers
Cities and Countries, & vpon statutes which
haue bin made in diuers Parliaments by our
Soueraigne Lord the king and his progeni-
tors, and by the Lords Spirituall and Tem-
porall, and all the Commons of the Realme.
And I haue also shewed thee in the ix. Chap-
ter of this booke, vnder what maner the sayd
generall Customes and Maximes of the law
may be proued and affirmed if they were denied
and diuers other thinges be contained in this
present Dialogue, which will appeare in the
table,

The 32. Chapter.

table, that is in the latter end of the booke; as
to the readers will appeare. And in the end of
the said dialogue, I haue at thy desire shewed
the my cōcept concerning recoveries of tailed
lāds & thou hast vpd the said recoveries shew-
ed me thine opinion. And I beseech our Lord
set them shortly in a good clere way, for surely
it will be right expedient for the wel ordering
of conscience in many persons, that they
be so. And thus the God of peace and
loue be alway with vs.

Amen.



The Prologue.

58



Ere endeth the first Dialogue in English, with newe additions betwixt a doctor of diuinity, & a Student in the lawes of England. And hereafter followeth the second.

In the beginning of which Dialogue the Doctor aunswereth to certaine questions, which the Student made to the Doctor before the making of this Dialogue, concerning the lawes of England and conscience, as appeareth in a Dialogue made betweene them in Latin the xxiiij. Chapter. And he aunswereth also to diuers other questions that the Student maketh to him in this Dialogue, of the law of England and conscience. And in diuers other Chapters of this present Dialogue is touched shortly, how the laws of England are to be obserued and kept in this Realme, as to temporal things, aswel in lawe as in conscience, before any other laws. And in some of the Chapters thereof, is also touched that spiritual Iudges in diuers cases be bound to giue their Iudgements according to the kings law. And in the latter end of the booke the Doctor moueth diuers cases concerning the lawes of England, wherein he doubteth how they may stand with conscience, whereunto the student maketh aunswere in such maner as to the reader wil appeare.

H.ij.

In

The Introduction.

In the latter end of our first Dialogue in latin, I put diuers cases grounded vpon the lawes of England wherin I doubted, and yet do, what is to be holden therein in conscience. But forasmuch as the time was then farre past, I shewed thee that I would not desire thee to make aunswere to the forthwith at that time, but at some better leisure, wherunto thou saiest thou wouldest not only shew thine opinion in these cases, but also in such other cases as I would put: wherefore I pray thee now (forasmuch as me thinketh thou hast good leisure) y thou wilt shew me thine opinion therein. D. I will with good will accomplish thy desire: but I would that when I am in doubt what the law of this realme is in such cases as thou shalt put, y thou wilt shew me what y law is therin: for though I haue by occasion of our first Dialogue in latin learned many things of the lawes of this realme which I knew not before, yet neuertheless there be many mo thinges that I am yet ignorant in, & that parauenture in these selfe cases that thou hast put & intēdest hereafter to put: & as I said in the first Dialogue in latin the xx. Cha. to search conscienc: vpon any case of the law it is in vaine, but where the law in the same case is perfectly knowen. S. I will with good wil do as thou saist, & I entende to put diuers of the same questions, that be in the last Cha. of the said Dialogue in latin, & sometime I intend to alter some of them, and adde some new questions to them, as I shalbe most
in

in doubt of. D. I pray thee do as thou saiest, & I shal with good will either make answer to them forthwith aswell as I can, or shall make longer respite to be aduised, or els parauenture agree to thine opinion therein, as I shall see cause. But first I would gladly know the cause why thou hast begun this Dialogue in the English tongue, & not in the latin tongue, as the first cases y^e thou desiredst to know mine opinion, be in, or in French as the substance of the law is. S. The cause is this. It is right necessary to al men in this realme, both spiritual & tempoꝛal for the good ordering of their conscience, to know many thinges of the lawe of England that they be ignorant in. And though it had bin moze pleasant to the that be learned in the latin tongue to haue had in latin rather then in English: yet neuertheles forasmuch as many can read English that vnderstand no latin, & some that cannot read English, by hearing it read may learne diuers thinges by it, that they should not haue learned if it were in latin: Therfore for the profit of the multitude it is put into the English tongue rather then into the latin or french tongue. For if it had bin in French, few should haue vnderstood it, but they that be learned in the Law, & they haue least need of it, forasmuch as they knowe the law in the same cases without it, & can better declare what conscience wil thereupon, then they that know not the law nothing at al. To them therefore that be not learned in the law of the realme this treatise is specially made for thou knowest well by such studies thou hast

H. iij.

taken

The 1. Chapter.

taken to some knowledge of the law of the realm that is to them most expedient? D. It is true that thou saist & therefore I pray thee now proceede to thy questions.

¶ The first question of the Student.

Cap. 1.

I A tenant in taile after possibility of issue extinct, do wast, whether doth he thereby offend in conscience though he be not punishable of wast by the law? D. Is the law clere that he is not punishable for the wast? St. Ye verely. D. And what is the law of tenants for terme of life, or for terme of yerres if they do wast? S. They be punishable of wast by the statutes, and shall yeld treble damages, but at the common law before the statute they were not punishable. D. But whether thinkest thou that before the statute they might haue done wast with conscience, because they were not punishable by the law? St. I thinke not for as I take it, the doing of wast of such perticuler tenant for terme of life, for terme of yerres, or of tenants in Dower, or by the curtelie, is prohibited by the law of reason, for it seemeth of reason that when such leases be made, or that such titles in Dower or by the Curtelie be given by the law, that there is onely given unto them the annuell profits of the land, and not the houses and trees, and the grauell to digge and carry away, whereby the whole profit of them in the reuersion should be taken away
for

for ever. And therefore at the common law for
wast done by tenant in dower or tenant by the
curtesie, there was punishment ordained by the
law by a prohibition of wast, whereby they
shoulde haue yeilded damages to the value of
the wast. But against tenant for terme of life
or for terme of yerres lay no such prohibition
for there was no Maxime in the law therein,
against them, as there was against the other.
And I thinke the cause was forasmuch as it
was iudged a folly in the lessor that made such
a lease for terme of life or for terme of yerres,
that at the time of the lease he did not prohi-
bite them they should not do wast, and sith he
did not prouide no remedy for himselfe, the law
would none prouide. But yet I thinke not
that the intent of the law was that they might
lawfully and with good conscience doe wast,
but against tenants in dower, and by the cur-
tesie the lawe prouided remedy, for they had
their title by the law.

And verely me thinketh that this ten-
taile as to doing of wast, should be like to a te-
nant for terme of life, for he shal haue the land
no longer the for terme of his life, no more the
a tenant for terme of life shal, and the wast of
this tenant is as great hurt to him in the re-
uerſion or the remainder, as is the wast of a te-
nant for terme of life, and if hee alien, the
donour shal enter for the forfeiture, as he shal
vpon the alienation of a tenat for terme of life,
and if he make default in a Præcipe quod red-
dar the donour shall be receiued as he shall be
vpon the default of a tenant for terme of life,

The 1. Chapter.

and therfore me thinketh he shall also be punishable of wast, as tenant for terme of life shal. S. If he alien, the donoz shal enter as thou saist because the alienation is to his disheritance, & therfore it is a forfeiture of his estate: & that is by an auncient Maxime of the law that giueth that forfeiture in the selfe case, and if hee make default in a Præcipe quod reddat, he in the reuersion, as thou saist shalbe receiued, but that is by the statute of west. 2. for at the common law there was no such rescit, & as for the statute that giueth the action of wast against a tenant for terme of life, and for terme of yeres, it is a statut penal & shal not be taken by equitie, and so there is no remedye giuen against him, neither by common law nor by statute, as there is against tenant for terme of life, & therfore he is unpunishable of wast by the law. D. And though he be unpunishable of wast by the law, yet neuerthelesse me thinketh he may not by conscience do that, that shalbe hurtfull to the inheritance after his time, sith he hath the land but for terme of his life, no more then a tenant for terme of life may, for then he should do as he would not be done vnto, for thou agreest thy selfe that though a tenant for terme of life was not punishable of wast before the statute, that yet the law iudged not that hee might rightfully and with good conscience do wast. And therfore at this day if a feoffement be made to the vse of a man for terme of life, though there lie no actiō against him for wast, yet he offendeth in conscience if he do wast, as the tenant for terme of life did afore the Statute,

tute, when no remedy lay against him by the law. S. That is true, but there is great diuersitie between this tenant and a tenant for terme of life: for this tenant hath good authoritie by the donoꝝ to do wast, and so hath not the tenant for terme of life, as it is said before. For the estate of a tenant in taile after possibilitie of issue extinct, is in this maner, when lands be giuen to a man and to his wife, & to the heires of their two bodies begotten, & after the one of them dieth without heires of their bodies begotten, then he or she that ouerliueth is called tenant in taile after possibilitie of issue extinct, because there can neuer be no possibilitie by any heire that may enherite by force of the gift. And thus it appeareth that the donees at the time of the gift, receiued of the donoꝝ estate of inheritāce, which by possibility might haue continued for euer, whereby they had power to cut downe Trees, and to do al thing that is wast, as tenant in fee simple might, And that authoritie was strong in the lawe, as if the lessour that maketh a lease for terme of life, say by expresse words in the lease, that the lessee shall not be punishable of wast. And therefore if the donour in this case had graunted to the donees that they shoulde not be punishable of wast, that graunt had bin void, because it was excluded in the gift before, as it should be upon a gift in fee simple: & so forasmuch as by the first gift and by the livery of seisin made upon the same, the donees had authoritie by the donoꝝ to do wast: Therefore though that one of those donees be now dead without issue, so that

Exh. 1. Ins.
27. b.

Exh. 1. Ins. 2

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that it is certain that after the death of the o-
ther, the land shal reuert to the donoz: yet the
authozitie that they had by the donour to do
wast, continueth as long as the gift, and the
liuery of seisin made vpon the same continueth:
and I take this to be the reason why he shall
not haue in aide as tenant for terme of life shal,
that is to say, for that he cannot aske helpe of
that Maxime, whereby it is ordeined that a te-
nant for terme of life shall haue in aide, for he
cannot say, but that he tooke a greater estate by
the liuery of seisin y^e was made to him, which
yet continueth, then for terme of life, and so I
think him not bound to make any restitution
to him in the reuerſion in this case, for the
wast. D. Is thy mind only to proue that this
tenant is not bound to make restitution to him
in the reuerſion for the wast: or that thou thin-
kest that he may with clere conscience do all
maner of wast: S. I intend to proue no more,
but that he is not bound to restitution to him
in the reuerſion. D. When I wil right well a-
gree to thine opinion for the reason that thou
hast made, but if thy mind had bin to haue pro-
ued that he might with clere conscience haue
done all maner of wast, I would haue thought
the contrary therto, & that the tenat in fee ſim-
ple may not do all maner of wast and destructi-
on with conscience, as to pull downe houses &
make pastures of Cities and towneſ, or to do
such other actes which be against the common
wealth. And therefore some wil say that tenat
in fee ſimple may not with conscience destroy
his woodg & coale pits wherby a whole coun-
tre

trep for their mony haue had fuel, & yet though he do so he is not bound by conscience to make restitution to no person in certein. But now I pray thee ere thou proceede to the seconde case, that thou wilt somewhat shew me what thou meanest when thou saiest, at the common law it was thus or thus: I vnderstand not fully what thou meanest by that terme, at the common law. S. I shall with good will shew thee what I meane thereby.

¶ What is meant by this terme when it is said, thus it was at the Common law.

Cap. 2.

The Common law is taken three maner of waies. First it is taken as the lawe of this Realme of England disseuered from all other laws, And vnder this maner taken, It is often times argued in the lawes of Englands what matters ought of right to be determined by the common law, and what by the Admirals Court, or by the spirituall court, and also if an Obligation beare date out of the Realme as in Spaine, Fraunce, or such other, It is said in the law and trouth it is, that they bee not pleadable at the common law. Secondly the common law is taken as the kings courts of his Bench, or of the common Place, and it is so taken when a plee is remoued out of ancient demesne for that the land is franke fee & pleadable at the common law, that is to say, in the kings court & not in Ancient demesne.

And

The 3. Chapter.

And vnder this maner taken, it is oftentimes pleaded also in base courts, as in courts Barons, the county and the court of Hiponders, & such other, this matter or that &c. ought not to be determined in that court, but at the common law, that is to say, in the kings courts &c. Thirdly by the common law is vnderstood such things as were law before any statute made in that point y^e is in question, so that that point was holden for law by the general or particular customes and Maximes of the Realme or by the law of reason & the law of god, no other law added to them by statute nor otherwise, as is the case before rehearsed in the first chapter, where it is said that at the common lawe tenant by the curteise & tenant in dower were punishable of wast, that is to say, that before any statute of wast made, they were punishable of wast by the ground & Maximes of the law v^eled before the statute made in that point, but tenat for terme of life, ne for terme of yerres were not punishable by the said groundes and Maximes till by the statute remedy was giuen against them, and therefore it is said that at the common law they were not punishable of wast. D. I pray the now proceed vnto the second question.

¶ The second question of the Student.

Cap. 3.

¶ If a mā be outlawed & neuer had knowledge of the suit, whether may the king take al his goods,

goods, and retaine them in conscience as he may by the law. D. What is the reason why they be forfeited by the law in that case? S. The verie reason for that it is an old custome and an old Maxime in the law, that he that is outlawed shall forfeit his goods to the king, and the cause why that Maxime began, was this: When a man had done a trespass to another, or an other offence wherfore procelle of vtlagary lay, and he that the offence was done to, had taken an action against him according to the lawe, if he had absented himselfe and had no landes, there had bin no remedie against him: for after the lawe of England, no man shall be condemned without answer, or that he appeare and will not answer, except it be by reason of any Statute. Therefore for the punishment of such offenders as will not appeare to make answer and to bee iustified in the kings Court it hath bin vled without time of minde, that an attachement in that case should bee directed against him retournable in the Kinges Bench or the Common place, and if it were returned therupon that he had nought whereby he might bee attached, that then should go forth a Capias to take his person, and after an Alias capias, and then a Pluries, and if it were returned boyn every of the said Capias that hee coulde not bee found and hee appeared not, then should an Exigent be directed against him, which should haue so long a day of returne, that five Counties might be holden befoze the returne thereof, and in euerie of the said five Counties, the defendand to bee
for

The 3. Chapter.

solempnely called, and if he appeare not, then for his contumacie & disobedience of the lawe, the Coroners to giue Iudgement that he shal be Outlawed, whereby he shall forfeit his goods to the king and lesse diuers other aduantages in the law that needeth not here to be remembred now. And so because he was in this case called according to the lawe and appeared not, it seemeth that the king hath good title to the goods both in law and conscience.

D. If he had knowledge of the suit in verie deepe, it seemeth the king hath good title in conscience, as thou saist, But if he had no knowledge thereof: it seemeth not so, for the default that is adiudged in him (as appeareth by thine owne reason) in his contumacy and disobedience of the law, and if he were ignorant of the suite, then can there be assigned to him no disobedience: for a disobedience implieth a knowledge of that he should haue obeyed vnto.

Ser. It seemeth in this case that he should be compelled to take knowledge of the suit at his perill, for sith he hath attempted to offend the law: it seemeth reason that he shalbe compelled to take heede what the law will doe against him for it, and not onely that, but that he shoulde rather offer amendes for his Trespas then for to tarie till he were sued for it.

And so it seemeth the ignorance of the suite is of his owne default, specially sith in the law is set such order that euery man may know if he will, what suit is taken against him, and may see the Recordes thereof when he will, and so it seemeth that neither the partie nor
the

the law be not bounden to giue him no know-
ledge therein. And ouer this I would some-
what moue further in this matter thus. That
though that action were vntreue and the defen-
dant not guiltie, that yet the goods be forfai-
ted to the king for his not apparance in law,
and also in conscience, and that for this cause
the king as Soueraigne and head of the law,
is bounden of Justice to graunt such writs
and such processe as be appointed in the lawe
to euery person that wil complaine, be his sur-
mise true or false, and thereupon the king (of
Justice) oweth aswell to make processe to
bring the defendant to aunswere when he is
not guiltie, as when hee is guiltie, and then
when there is a Maxime in the law, that if a
man be Outlawed in such maner as before ap-
peareth, that he shall forfeit all his goods to
the king, and maketh no exception whether the
action be true or vntreue, it seemeth that the
said Maxime more regardeth the generall mi-
nistration of Justice, then the particuler right
of the partie, and therfore the proprietie by the
Outlawie and by the said Maxime ordeined for
ministration of Justice, is altered and is giuen
to the king as before appeareth, and that both
in law and in conscience, aswell as if the action
were true. And then the partie that is so out-
lawed, is driuen to sue for his remedy against
him that hath so caused him to be Outlawed
vpon an vntreue action.

D. If he haue not sufficient to make recou-
pence or dye before recouerie can bee had, what re-
medie is had then? S. I thinke no remedie
and

The 3. Chapter.

and for a further declaration in this case & in
such other like cases where the property of
goods may be altered without assent of the owner,
it is to consider that the property of goods
be not given to the owners directly by the law
of reason nor by the law of God, but by the law
of man, and is suffered by the law of reason &
by the law of God so to be. For at the begin-
ning all goods were in common, but after they
were brought by the law of man into a certain
property, so that every man might know his
owne, & then when such property is given by
the law of man, the same law may assigne such
conditions upon the property as it listeth, so
they be not against the law of God, ne the law
of reason, and may lawfully take away that it
giveth, and appoint howe long the propertie
shall continue. And one condition that goeth
with every propertie in this Realme is, if he
that hath the property be outlawed according
to such processe as is ordeined by the law, that
he shall forfeit the propertie unto the king, and
divers other cases there be also, whereby pro-
pertie in goods shall be altered in the lawe, and
the right in landes also without assent of the
owner, whereof I shall shortly touch some
without saying any authority therein, for the
more shortnes. First by a sale in open market
the property is altered. Also goods stolen and
seised for the king, or sworne be forfeit, unless
appeal or indictment be sued. Also straes, if
they be proclaimed & be not after claimed by
the owner within the yere, be forfeit, & also a
Deodand is forfeit to whom soever the pro-
per-

perty was before (except it belöged to þ king)
 & shalbe disposed for the soule of him that was
 slaine therewith, & a fine with a sönclaine at
 the common law, was a barre, if claime were
 not made within a yere, as it is now by statut
 if the claime be not made within v. yere. And
 all these forfeitures were ordeined by the law
 vpon certaine considerations which I omit at
 this time, but certaine it is that none of them
 were made vpon a better consideration then
 this forfeiture of Attlagary was. For if no es-
 pecial punishmet should haue bin ordeined for
 offenders that would absent themselves & not
 appeare when they were sued in the kings
 courts, many suits in the kings courts should
 haue bin smale of effect. And sith this Maxime
 was ordeined for the execution of Justice, & as
 much done therein by the common law, as po-
 licie of man could reasonably deuise, to make
 the party haue knowledge of the suit, and now
 is added therto by the statute made the vi. yere
 of H. 8. that a writ of Proclamation shall be
 sued if the partie be dwelling in an other shire:
 it seemeth that such title as is giuen to the
 king thereby is good in conscience, especially
 seeing that the king is bound to make processe
 vpon the surmise of the plaintife, and may not
 examine but by plee of the partie, whether
 the surmise be true or not. But if the partie
 be returned five times called, where in deede
 he was neuer called (as in the second case of
 the last Chapter of the said Dialogue in latin
 is contained) then it seemeth the partie shall
 haue good remedy by petition to the king, spe-

The 4. Chapter.

cially if he that made the returne be not sufficient to make recompence, or die before recovery can be had. D. Now sith I haue heard thine opinion in this case wherby it appeareth that many things must be seen, or a full & a plain declaration can be made in this behalfe, & seeing also that the plaine answer to this case, shall giue a great light to diuers other cases that may come by such forfeiture: I pray thee giue me a farther respite, ere that I shew thee my full opinion therein, and hereafter I shall right gladly do it. And therefore I pray thee proceed now to some other case.

¶ The third question of the Student.

Cap. 4.

If a stranger do wast in lands that an other holdeth for terme of life without assent of the tenant for terme of life, whether may he in the reuerſion recouer treble damages, and the place wasted against the tenant for terme of life according to the statute, in conscience, as he may by the law, if the stranger be not sufficient to make recompence for the wast done? D. Is the law clere in this case that he in the reuerſion shall recouer against the tenant for terme of life though that he assented not to the doing of wast? S. Ye verely, and yet if the tenant for terme of life had bin bounden in an Obligation in a certaine summe of money that he should do no wast, he should not forfeit his bond by wast of a stranger, and the diuersitie is this.

¶ It

It hath bin vñed as an auncient Maxime in the law that tenāt by the Curtesie & tenant in Dowry should take the land with this charge, that is to say, that they should do no wast themselves, nor suffer none to be done, and when an action of wast was giuen after against a tenāt for terme of life, then was he taken to be in the same case as to the point of wast, as tenant by the Curtesie, & tenant in Dowry was, that is to say, that he shoulde do no wast, nor suffer none to be done, for there is another Maxime in the law of England, that al cases like vnto other cases shalbe iudged after the same law as other cases be, & with no reason of diuerſity can be assigned why the tenant for terme of life after an action of wast was giuen against him, should haue any more fauor in the law then the tenant by the Curtesie, or tenant in Dowry should: therfore he is put vnder the same maxime as they be, that is to say, that he shal do no wast, ne suffer none to be done, and so it seemeth that the law in this case doth not consider the abilitie of the person that doth the wast, whether he be able to make recōpence for the wast or not, But the assent of y^e said tenants, whereby they haue wilfully takē vpon them y^e charge to see that no wast shalbe don. D. I haue heard that if houses of these tenants be destroyed with fodein tempest, or with strange enemies y^e they shal not be charged with wast. S. Truth it is. D. And I thinke the reason is because they can haue no recouerie ouer. S. I take not that for the reason, but that it is an old reasonable Maxime in the law that they shoulde

The 4. Chapter.

be discharged in these cases, howbeit some will say that in these cases the law of reason doth discharge the, & therfore they say yf a statute were made, y they should be charged in those cases of wast, that the statut were against reason, & not to be obserued, but yet neuerthelesse I take it not so, for they might refuse to take such estate if they would, & if they will take the estate after the law made, it semeth reasonable that they take it with the charge & with the condition that is appointed thereto by y law, though hurt might follow to them afterward therby: for it is often times seene in the law y the law doth suffer him to haue hurt without help of the law, that will wilfully run into it of his own act not compelled therto, & adiudgeth it his folly so to run into it, for which folly he shal also be many times without remedy in conscience. As if a man take lands for terme of life, & bindeth himselfe by Obligation that he shal leaue the land in as good case as he found it, if the houses be after blowen downe with tempest or destroyed with straunge enemies, as in the case that thou hast put before, he shall be bound to repaire them or els he shal forfeit his Obligation in law & conscience, because it is his owne act to bind him to it, and yet the law would not haue bound him therto as thou hast said before. So me thinketh that y cause why the said tenants be discharged in the law in an action of Wast when the houses be destroyed by sodeine tempest, or by strange enemies, is by a special reasonable Maxime in the law, wherby they be excepted from the other generall bond, before

before reherſed, that is to ſay, they ſhal at their
 peril ſee that no waſt ſhalbe done, & not by the
 laſw of reaſon, & ſith there is no maxime in this
 caſe to helpe this tenant, ne that he cannot be
 holpen by the laſw of reaſon, it ſeemeth that he
 ſhalbe charged in this caſe by his owne act both
 in laſw & conſcience, whether the ſtranger be a-
 ble to recōpence him oz not. D. I doubt in this
 caſe whether the maxime that thou ſpeakeſt of
 be reaſonable oz not, that is to ſay, that tenants
 by the curteſy & tenants in doſwer were bound
 by the cōmon laſw, that they ſhould do no waſt
 themſelues, & ouer that at their peril to ſee that
 no waſt ſhould be don by none other. For that
 laſw ſeemeth not reaſonable that bindeth a mā
 to an impoſſibility. And it is impoſſible to pre-
 uent that no waſt ſhalbe done by ſtrangers, for
 it may be ſodenly done in the night, that the te-
 nants can haue no notice of, oz by great power
 that they be not able to reſiſt, & therefore me
 thinketh they ought not to be charged in thoſe
 caſes for the waſt, without they may haue good
 remedy ouer, and then percaſe the ſaid maxime
 were ſufferable, & els me thinketh it is a maxi-
 me againſt reaſon. S. As I haue ſaid before no
 man ſhalbe compelled to take the bond vpon
 him, but he that wil take the land, & if he wil
 take the land, it is reaſon he take the charge as
 the laſwe hath appointed it, and then if any
 hurt grow to him thereby, it is through his
 owne act & his owne aſſent, for he might haue
 refuſed the leaſe if he would. D. Though a mā
 may reſuſe to take eſtate for terme of life, oz
 for terme of yerres, and a woman may reſuſe

The 4. Chapter.

to take her dower, yet tenant by the Curtesie cannot refuse to take his estate, for immediately after the death of his wife, the possession abideth still in him by the act of the law without entre, & then I put the case that after the death of his wife, he would waive the possession, and after waits were done by a stranger, whether thinkest thou that he should answer to the waite? S. I thinke he should by the law. D. And how standeth that with reason, seeing there is no default in him? S. It was his default, and at his owne perill that he would marry an inheritrice whereupon such danger might follow. D. I put case that he were within age at the marriage, or that the land descended to his wife after he married her. S. There thou mouest a farther doubt then the first question is, and though it were as thou saiest, yet thou canst not say but that there is a great default in him as is in him in the reversion, & that there is as great reason why he should be charged with the waite, as that he in the reversion should be disinherited and haue no maner remedy, ne yet no profit of the land as the other hath, & though the said maxime may be thought very straight to the said tenants, yet it is for to be fauoured as much as may be reasonably, because it helpeth much the common wealth: for it hurteth the common wealth greatly when woods & houses be destroyed, & if they should answer for no waite, but for waite don by themselves, there might be waits don by strangers by commandement, or assent in such colourable maner, that they in the reversion should neuer haue profit
of

of these assent. D. I am content thine opinion stand for this time, and I pray thee now proceed to an other question.

The 4. question of the Student

Cap. 5.

If he that is the very heire be certified by the ordinary bastard, and after bring an action as heire against another person, whether may any man knowing the truth be of counsaile with the tenant and plede the said certificat against the demandant by conscience or not? D. Is the law in this case that all other against whome the demandant hath title shall take advantage of this certificate as well as he at whose suit he is certified bastard? S. Ye verely, & that for ij. causes, whereof the one is this. There is an old Maxime in the law, that a mischief shall be rather suffered then an inconvenience, & then in this case if another writ should afterward be sent to another Bishop in another action, to certify whether he were bastard or not peradventure p Bishop would certify that he were mulier, that is to say, lawfully begotten, & then he should recover as heire, & so he should in one selfe court be taken as mulier & bastard: for avoiding of which contrariety, the law will suffer no moe writs to go forth in that case, & suffreth also all men to take advantage of the certificate, rather then to suffer such a contradiction in the court, which in p law is called an inconvenience, & the other cause is because this

I. iij.

certi-

The 5. Chapter.

certificate of the Bishop, is the highest trial y^e is in the law in this behalfe, but this is not vnderstood but where bastardy is layed in one that is party to the writ, for if bastardy be laid in one that is a stranger to the writ, as if you chee pray in aid of such other, then that bastardy shalbe tried by xij. men, by which trial he in whom the bastardy is laid, shal not be concluded, because he is not priuy to the trial, & may haue no attaint, but he that is party to the issue may haue attaint, & therfore he shalbe concluded & none other but he: & forasmuch as the said Maxime was ordeined to eschew an inconuenience (as befoze appeareth) it semeth that euery man learned, may with conscience plede the said certificate for auoiding thereof, & giue counsaill therein to the party according vnto the law, for els the said inconueniency must needs folloiw. But yet neuertheles I do not meane thereby that the party may after when he hath barred the demandant by the said certificat, retaine the lande in conscience by reason of the said certificate, for though there be no law to compel him to restore it, yet I think wel that that in conscience is bound to restore it, if hee knowe y^e the demandant is the very true heire, whereof I haue put diuers cases like in the xviij. Chapter of our first Dialogue in latin, but my intent is that a man learned in the law in this case & other like, may with conscience giue his counsaill according to the law, in auoiding of such things as the law thinketh shold for a reasonable cause be eschewed. D. Though he that doth not know whether he be bastard

or not, may giue his counsaile & also plede þe said certificate: yet I thinke that he that doth know himself to be the very true heire may not plede it, & that is for two causes whereof the one is this. Every man is bound by the law of reason to do as he would be done to, but I thinke that if he that pledeth that certificate were in like case, he would thinke that no man knowing the said certificate to bee vnttrue, might with conscience plede it against him, wherefore no more may he plede it against none other. The other cause is this, although the certificate be plede, yet is the tenant bounden in conscience to make restitution thereof, as thou hast said thy selfe, and then in case that he would not make restitution, then he that pledeth the plee, should run thereby in like offence, for he hath holpen to set the other man in such a libertie that he may chose whether he will restore the land or not, and so he shoulde put himselfe to ieopardy of another mans conscience. And it is written Ecclesiast. 3. Qui amat periculum peribit in illo. That is, he that wilfully will put himselfe in ieopardie to offende, shall perishe therein, And therefore it is the surest way to eschewe perils, for him that knoweth that he is heire, not to plede it, and as for the inconuenience that thou saiest must needes followe, but the certificate bee pleaded, As to that it may be answered, that it may bee plede by some other that knoweth not that he is very heire, & if the case be so farre put that there is none other learned there but he, then me thinketh that he shall rather suffer the said incon-

The 6. Chapter

inconuenience, then to hurt his owne conscience, for alway charity beginneth at him selfe, & so euery man ought to suffer al other offences rather then he himself would offend. And now we that thou knowest mine opinion in this case, I pray thee proceed to another question.

The 5. question of the Student,

Cap. 6.

Whether may a man with conscience be of counsaill with the plaintiff in an action at the common law, knowing that the defendand hath sufficient matter in conscience whereby he may be discharged by a Sub pena in the Chancery which he cannot pledge at the common law or not? D. I pray thee put a case thereof in certain, for els y^e question is verie general. S. I wil put the same case that thou puttest in our first dialogue in Latin, the x. Chapter, that is to say, If a man bound in an Obligation pay the money, and taketh no acquittance, so that by the common law he shalbe compelled to pay the money againe for such consideration, as appeareth in the xv. Chap. of the said Dialogue, where it is shewed euidently how the law in that case is made by a good reasonable ground, much necessarie for al the people, howbeit, that a man may sometime through his owne default take hurt therby, wherin I pray thee shew me thine opinion. D. This case semeth to be like to y^e case that thou hast next before this, & that he that knoweth the painment to be made doth not as he would be done to, if he gine counsel that an action should be taken to haue it payed againe.

gaine. S. If he be sworn to give counsell according to the law, as Sericants at the law be, it seemeth he is bound to give counsell according to the law, for els he should not perforce his othe. D. In these words (according to the law) is vnderstood the law of God, and the law of reason, as well as the law & customes of the realme, for as thou hast said thy selfe in our first dialogue in latin, that the law of God & the law of reason, be two especial groundes of the lawes of England, wherfore as me thinketh he may give no counsel (sauiing his othe) neither against the law of God nor the law of reason, & certein it is that this article, that is to say, that a man shall do as he would be done to, is grounded vpon both the said lawes. And first that it is grounded vpon the law of reason, it is euident of it selfe. And in the vi. chapter of Saint Luke it is said. Et prout vultis vt faciant vobis homines, & vos facite illis similiter, that is to say, all that other men should do to you, do you to them, and so it is grounded vpon the law of God, wherfore if he should give counsell against the defendat in that case he should do against both the said lawes. S. If the defendat had no other remedy but the common law, I would agree wel it were as thou saiest, but in this case he may haue good remedy by a Sub pena and this is the way that shall induce him directiue to his Sub pena, that is to say, when it appeareth that the plaintife shall recouer by Lawe. Doct. Though the defendaunt may be discharged by Sub pena, yet the bringing in of his pzooues there, will be to the

The 7. Chapter

the charge of the defendāt, and also the pzoones may die oz they come in. Also there is a ground in the law of reason, quod nihil possimus contra veritatem (that is) we may do nothing against the truth, and if he knoweth it is truth that the money is paid, he may do nothing against the truth, and if he should be of counsaile with the plaintife, he must suppose and auerre that it is the very due debt of the plaintife, & that the defendāt withholdeth it from him unlawfully, which he knoweth himselfe to be untrue, wherefoze he may not with conscience in this case be of counsaile with the plaintife; knowing that the plaintife is payed already; wherefoze if thou be contented with this answer, I pray thee proceed to some other question. S. I wil with good wil.

¶ The 6. question of the Student.

Cap. 7.

A Man maketh a feoffement to the vse of him & of his heires, & after the feoffour putteth in his beasts to manure the ground, & the feoffee taketh them as damages felant, & putteth the in pound, and the feoffour bringeth an action of trespass against him for entring into his ground &c. whether may any man knowing the sayde vse, be of counsaile with the feoffee to auoid the action? D. May he by the common law auoid that action seing that the feoffour ought in conscience to haue the profits? S. Ye verely, for as to the common lawe the whole interest is in the

the lessee, and if the feoffee wil breake his conscience, and take the profits, the feoffour hath no remedy by the common law, but is driven in that case to sue for his remedy by Sub pena for the profits, and to cause him to refoffe him againe, & that was sometime the most common case where the Sub pena was sued, that is to say, before the statute of R. 3. but sith the statute, the lessor may lawfully make a feoffment. But neuertheless for the profits receiued, the feoffor hath yet no remedy but by Sub pena as he had before the said estatute. And so the supposel of this action of trespass is vnttrue in euerie point, as to the common law.

D. Though the action be vnttrue as to the law yet he that sueth it ought in conscience to haue that he demandeth by the action, that is to say, damages for the profits, and as it seemeth no man may with conscience giue counsaile, against that he knoweth conscience would haue done. S. Though conscience would he should haue the profits, yet conscience wil not that for the attaining thereof the feoffour should make an vnttrue surmise. Therefore against the vnttrue surmise euery man may with conscience giue his counsaile for in that doing he resisteth not the plaintife to haue the profits, but he withstandeth him that he should not maintaine an vnttrue action for the profits. And it suffiseth not in the law, ne yet in conscience as me seemeth, that a man haue right to that he sueth for, but that also he sue by a iust meanes, and that he haue both good right, and also a good and a true conuetance to come to his right: for
if

The 7. Chapter.

if a man haue right to lands as heire to his father, and he wil bring an action as heire to his mother that neuer had right, euery man may giue counsaile against the action though he know he haue right by an other means, and so as we thinketh he may do in dilatories, whereby the party may take hurt if it were not pleaded, though he knew the plaintife haue right, as if the partie or the towne be misnamed or if the degrees in writs of Entre be mistakē, but if the partie should take no hurt by admitting of a dilatory there he that knoweth that the plaintife hath right may not pleade that dilatorie with conscience, As in a Formedon to plede in Abatement of the writ because he hath not made himself heire to him that was last seised, or in a writ of right for that the demaundant hath omitted one pretended right ne such other, ne he may not assent to the casting of an essoign nor protection for him if he know that the demaundant hath right, ne he may not vouch for him, except it be that he knoweth that the tenant hath a true cause of a vouchier, & of lien, & that he doth it to bring him thereto, & in like wise he may not pray in aid for him, vnles he know the praiser haue good cause of vouchier & lien oruer, or that he knew that the praiser hath somewhat to plede that the tenant may not plede, as villen. in the demaundant, or such other. D. Though the plaintife hath brought an action that is untrue & not maintainable in the law, yet the defendant doth wrong to the plaintife in the withholding of the profits aswel before the action brought as hanging the action, and that

that wrong as it seemeth the counsaillor doth
maintain & also sheweth himselfe to fauor the
party in that wrong when he giueth counsaile
against the action. S. If the plaintife do take
that for a fauour & a maintenance of his wrong
he iudgeth farther then the cause is giuen, so
that the counsaillor do no more but giue coun-
saile against the action, for though he giue him
counsaile to withstand the action for the vn-
truth of it, and that he should not confesse it &
to make thereby a fine to the King without
cause, yet it may stand with reason that he
may giue counsaile to the partie to yeelde the
profits, & therfore I think he may in this case
be of counsaile with him at the common law,
and be against him in the Chauncerie, and in
either Court giue his counsaile without any
contrariety, or hurt of conscience, and vpon
this ground it is that a man may with good
conscience be of counsaile with him that hath
land by discent, or by a discontinuance with-
out title, if he that hath the right bring not his
action according to the law, for the recovering
of his right in that behalfe.

The senenth question of the

Student.

Cap. 8.

If a mā take distress for debt vpon an obligati-
on, or vpon a contract, or such other thing y he
hath right title to haue, but y he ought not by
law to distrain for it, & neuertheless he keepeth
the

The 8. Chapter.

the same distresse in pound til he be paid of his
duety, what restitution is he bound to make in
this case, whether shal he repay the money be-
cause he is come to it by an vnlawfull means,
or only to restore the party for the wrongfull
taking of y^e distres, or for neither, I pray you
shew me. D. What is the law in this case? S.
That he that is distrained may bring a special
actiō of trespass against him that distrained, for
that he tooke his beasts wrongfully, & kept the
till he made a fine, & therefore he shal recover y^e
fine in damages, as he shal do for the residue of
trespass, for the taking of the money by such cō-
pulsion is taken in the law but as fine wrong-
fully taken, though it be his duty to haue it.
D. Yet though he may so recover, me thinketh
that as to the repayment of the money he is not
bound therto in conscience, so y^e he take no more
then of right he ought to haue, for though he
come to it by an vniust meane, yet when the
money is paid him, it is his of right & he is not
bound to repay it vnles it be recovered as thou
saidst, & then when he hath repaid it, he is as
me thinketh restored to his first action, but to y^e
redeliuery of the beasts with such damages &
such hurt as he hath by the distres, I suppose
he is bound to make recōpence of the in cōsciēce
without cōpulsion or suit in y^e law, for though
he might lawfully haue sued for his duty in
such maner as the law hath ordered, yet I agre
well that he may not take vpon him to be his
owne iudge, and to come to his duty against
the order of the law, and therefore if any hurt
come to the party by the disorder he is bound to
restore

restoze it. But I would think it were þ more
doubt if a man toke such a distresse for a tres-
pas done to him, & keepeth the distresse till a-
mends be made for the trespass, for in case that
the damages bee not in certein, but be arbitra-
ble either by the assent of the parties or by tri-
men, & it seemeth that there is no assent of the
partie in this case specially no free assent, for
that he doth is by compulsion and to haue his
distres againe, and so his assent is not much to
be pondered in that case, for al his assessing of
him that toke the distresse, & so he hath made
himselſe his owne Judge and that is prohibi-
ted in all lawes, but in that case where the di-
stres is taken for debt, he is not his own iudg,
for the debt was iudged in certeine before by
the first contrate, and therefore some thinke
great diu:rtie betwixt the cases. S. By that
reason it seemeth that if he that distraineth in
the first case for the debt take any thing for his
damages, that he is bound in conscience to res-
toze it againe, for damages be arbitrable and
not certaine no more then trespass is, & me see-
meth that both in the case of trespass & debt he
is bounde in conscience to restoze that he ta-
keth, for though he ought in right to haue like
sume as he receiueth, yet he ought not to haue
the mony that he receiueth, for he came to the
money by an vniust meanes, wherefore it see-
meth he ought to restoze it againe. D. And if
he shoulde bee compelled to restoze it againe,
shoulde he not yet (for that he receiued it once)
be barred of his first action notwithstanding
the paiement?

R. i.

S. A

The 9. Chapter.

S. I wil not at this time clerely asswile thee that question, but this I will say that if any hurt come to him thereby, it is thzough his owne default, for that he would do against the law, but neuertheless a little I wil say to thy question, that as me semeth when he hath repaid the mony that he is restored to his first action. As if a man condemned in an action of trespass pay the mony, and after the defendant reuerse the iudgement by a writ of Error, and haue his money repaid, then the paintife is restored to his first action. And therefore if hee that in this case took the mony, restore that he took by the wzongful distress: or that he ordered the matter so liberally that the other murmure not, ne complain not at it, me semeth he did very wel to be sure in conscience: & therefore I would aduise euery man to be wel ware how he distraineth in such case against y law. D. Thy counsaill is good & I note much in this case that the party may haue an action of trespass against him that distrained so that hee is taken in the law but as a wzong doer, & therefore to pay the money againe is the sure way as thou hast said before. And I pray thee now shewe mee for what a man may lawfully distraine as thou thinkest.

¶ For what thing a man may lawfully distraine,

Cap. 9.

A Man may lawfully distraine for a Rent service and for all maner of seruices, as homage,

mage, Fealty, Escuage, suit of Court, relieves, and such other. Also for a rent reserved upon a gift in tail, a lease for terme of life, for yeres, or at will, if he reserve the reversion, these for shall distraine of common right though there be no distresse spoken of. But in case a man make a feoffement and that in fee by Indenture, reserving a rent, he shall not distraine for that rent unless a distresse be expressly reserved, and if the feoffement be made without a dede reserving a rent, that reservation is boide in the Lawe, and he shall have the rent onely in conscience and shall not distraine for it, And like Lawe is where a gift in taile or a lease for terme of life is made the remainder over in fee reserving a rent, that reservation is boide in the Law.

Also if a man seised of land for terme of life graunteth away his whole Estate reserving a rent, that reservation is boide in the Lawe without it be by Indenture, and if it be by Indenture, yet he shal not distraine for the rent but a distresse be reserved. Also for Amerciament in a Leete, the Lord shall distraine. But for Amerciament in a Court baron he shal not distraine.

Also if a man make a lease at Michaelmas for a yere, reserving a rent payable at the feast of the Annunciation of our Lady and Saint Mich. the Archangell, in that case he shall distraine for the rent due at our Lady day, but not for the rent due at Michaelmas because the terme is expired.

But if a man make a lease at the feast of

R. ij.

Christ=

The 9. Chapter.

Christmas for to endure to the feast of Chyistmas next following, that is to say for a yere, reseruing a rent at the aforesaid feast of the Annunciation of our Lady and saint Michael the Archangell there he shall distraine for both the rentes as long as the terme continued, that is to say, till that aforesaid feast of Chyistmas.

And if a man haue lande for terme of life of John at Stoke and maketh a lease for terme of yeres reseruing a rent, the rent is behind and John at Stoke dieth, there he shal not distrain because his reuerſion is determined.

Alſo if he to whose vse leſſors bin ſeiſed maketh a lease for terme of yeres, or for terme of life, or a gift in taile reseruing a rent, there the reſeruation is good and the leſſour ſhall diſtraine.

And if a toſonſhip be amerced & the neighbors by aſſent aſſeſſe a certaine ſumme vpon euery inhabitant, & agree that if it be not payde by ſuch a day, that certeine perſons thereto aſſigned ſhall diſtraine. In this caſe the diſtreſſe is lawfull. If Lord and Tenant be, and if the tenant do hold of the Lord by fealtie and rent, and the Lord both graunt away the fealtie reſeruing the rent, and the tenant attourneth, in this caſe he that was Lord may not diſtraine for the rent, for it is become a rent ſecke. But if a man make a gift in taile to another, reſeruing fealty and certein rent, and after that he graunteth away the fealtie reſeruing the rent and the reuerſion to him ſelfe, in this caſe he ſhall diſtraine for the rent, for the graunt of the fealtie

fealtie is boide, for the fealtie cannot be severed from the reuerſion. Also for heriote ſervice the Lord ſhall diſtrain & for heriot cuſtome he ſhall ceſſe and not diſtaine, Also if a rent be assigned to make a partition or assignment of Doweregal, he or ſhe to whom that rent is assigned may diſtaine, and in al theſe caſes as boueſaid, where a man may diſtaine, he may not diſtrain in the night, but for damages feaſant, that is to ſay, where beaſtes do hurt in his ground he may diſtaine in the night. Also for waſts, for reparations, for accompts, for debts vpon contracts, or ſuch other no mā may lawfully diſtaine.

The 8. queſtion of the Student.

Cap. 10.

If a man doe a trespas and after make his executors and die before any amends made, whether be his executors bound in conſcience to make amends for the trespas if they haue ſufficient goods thereto, though there be no remedy againſt them by the law to compel them to it? D. It is no doubt but they are bounde thereto in conſcience before any other deepe in charity that they may do for him of their own deuotion. S. Then would I wit if the teſtator made legacies by his will, whether the executors be bound to do firſt, that is to ſay, to make amendes for the trespas, or to pay the legacies, in caſe they haue no goods to do bothe? D. To pay legacies: for if they ſhoulde firſt make

B. iij.

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make recompence for the Trespas and then
have not sufficient to pay the legacies, they
should be taken in the law as swasters of their
testators goods, for they were not compellable
by no law to make amends for the trespass, be-
cause every trespass dieth with the person, but
the legacies they should be compelled by the
law spirituall to fulfill and so they shoulde be
compelled to pay the legacies of their owne
goods, and they shall not be compelled thereto
by no law ne conscience, but if the case were
that he leaue sufficient goods to doe both, then
we thinketh they be bound to do both, and that
they be bound to make amendes for the Tres-
pas before they may do any other charitable
deede for the Testator of their owne minde as
I haue said before, except the funeral expences
that be necessary which must be allowed before
all other things. S. And what the prouing of
the Testament?
D. The Ordinary may nothing take by con-
science therefore, if there be not sufficient goods
besides for the funerals to pay the debts and to
make restitution. And in likewise the Execu-
tors be bound to pay debts vpon a simple con-
tract before any other deede of charitie that
they may do for their Testator of their owne
denotion though they shall not be compelled
thereto by the Law. S. And whether thinkest
thou that they be bound to do first, that is to
say, to make amendes for the trespass, or to pay
the debts vpon a simple contract? D. To pay the
debts, for that is certaine and the Trespas is
arbitrable.

S. Then

S. Then for the plainer declaration of this matter & other like, I pray thee shewe me thy mind by what law it is that if a man make executors, and that the executors if they take upon them be bound to performe the will and dispose the goods that remaine for the Testator. D. I thinke that it is best by the law of reason. S. And me thinketh that it should bee rather by the custome of the Realme. D. In all Countries and in all landes they make executors. S. That seemeth to be rather by a general custome, after that the law and custom of propertie was brought in, then by the law of reason, for as long as all things were in common, there were no executors ne willes, ne they needed not them, and when propertie was after brought in, me thinketh that yet making of executors and disposing of goods by will after a mans death followeth not necessarily therupon, for it might haue bin made for a law that a man should haue had the propertie of his goods only during his life, and that then his debts paid all his goods to haue bin left to his wife and children or next of his kin without any legacies making thereof, and so might it now be ordeined by statute, and the statute good & not against reason, wherefore it appeareth that executors haue no authoritie by the law of reason, but by the law of man. And by the olde law and custome of the Realme a man may make executors and dispose his good by his will, and then his executors shall haue the execution thereof, and his heires shal haue nothing, but if any perticuler custome helpe and

The 10. Chapter.

the executors shal also haue the whole possession and disposition of al his goods and chattels aswel real as personel, though no word be expressly spoken in the will, that they shal haue them, & they shal haue also actions to recouer al debts due to the testator though all debts & legacies of the testator be paid before, & shall haue the disposition of them to the vse of the testator & not to their own vse, & some thinke that the authority to make executors, & that they shal dispose the goods for the testator, is by the custome of the Realme. But then I thinke as thou saiest, that by the lawe of God they shalbe bound to do the first, that is to the most profit of the soule of their testator. Where the disposition thereof is left to their discretion, & that I agree well is to pay debts vpon contracts & to make amendes for wrong done to the testator though they be compelled thereto by the law & custome of the Realme, if there be none other debt nor legacy that they be bound to pay by the law: but if two seueral debts be payable by the law, then which debt they shal do first in conscience, I am somewhat in doubt. D. Let vs first know what the common law is therein. S. The comon law is, that if the testatour owe x. li. to two men seuerally by obligation or by such other manner that an action lyeth against his executors thereof by the lawe, and he leueth goods to pay the one and not both, that in that case he that can first obtaine his Iudgement against the executors, shall haue execution of the whole, and the other shall haue nothing, but to which of them

them he shal in conscience owe his fauor, the common law reacheth not. D. Therein must be considered the cause why the debts began, and then he must after conscience beare his lawfull fauor to him that hath the clearest cause of debt, and if both haue like cause, then in conscience he must beare his fauor where is most neede and greatest charity.

S. May the executors in that case delay that action that is first taken, if it stand not with so good conscience to be payed, as another debt whereof no action is brought, and procure that an action may bee brought thereof, and then to confesse that action, that hee may so haue execution, and the the executors to be discharged against the other? D. Why may he not in that case pay thother without action, and so be discharged in the law against the first?

S. No verely, for after an action is taken, the executor may not minister the goods so, but that hee leaue so much as shall pay the debt whereof the action is taken, and if hee do not, hee shall pay it of his owne goods, except an other recover and haue Iudgement agaynst him hanging that action, and that without conin.

D. Then to answere to thy question, I think that by delaies that be lawfull, as by Elloigne, empariance, or by Dilatory ples in abatement of the writ that is true, he may delay it, but he may plede no vntrue ples to preferre the other to his duety. But I pray thee what is the lawe of legacies, restitution, & debts, vpon contracts, that percase ought rather after charity

The 10. Chapter

to be paid then a debt vpon an obligation, what may the fauour of the Executor do in these cases? S. Nothing, for if they either performe legacies, make restitutions, or pay debts vpon contracts, and keepe not sufficient to pay debts which they are compellable by the law to pay, that shalbe taken as a *Deuastauerunt bona testatoris*, that is to say, that they haue wasted the goods of their testator, and therefore they shall be compelled to pay the debts of their owne goods. & so it is if they pay a debt vpon an Obligation wherof the day is yet to come though it be the clerer debt, and that be wth more charity to haue it paid. D. Yet in that case if he to whom the debt is already owing, forbear till after the day of the other Obligation is past, then he may pay him without danger. S. That is true, if there be no action taken vpon it, and though there be, yet if that action may be delayed by lawfull meanes, as thou hast spoken of before, til after the day, and that an action is taken vpon it, then may the executors confesse the action, and then after Iudgement he may pay the debt without danger of the law. D. Is not that confelling of the action so den of purpose a couin in the law? S. No verely, for couin is where the action is vntrue, & not where the executors beare a lawfull fauor. D. The Ordinary vpon the accompt in all the case before rehearsed, will regarde much what is best for the Testatour. S. But he may not driue them to accompt against the order of the common law.

A Man is indebted to an other vpon a simple contract in xx. li. and he maketh his wil and bequeth xx. li. to Henry Hart & dieth, & leueth goods to his executors only to bury him with, and to perfozme the said legacie, and after the said Executors deliuer the goods of their Testatour in perfourmance of the said bequest, whether is he to whom the bequest is made, bound in conscience to pay the said debt vpon the simple contract to the said Henry Hart or not? D. As he not bound thereto by the law? S. No verely? D. And what thinkest thou he is in conscience? S. I thinke that he is not bound thereto in conscience, for he is neither Ordinarie, Administratour, nor Executour. And I haue not heard that any man is bounde to pay debts of any mā that is deceased, but he be one of those thre, for the goods that the Testatour left to the executors were neuer charged with the debt, but the person of the Testator while he liued was onely charged with the debt, and not his goods, and his executours that represent his estate after his death hauing goods thereto of the testators, be charged also with the debtes and not the goods. And therefore if an Executour giue away or sell all the goods of the Testatour, or otherwise wast them, he that hath the goods is not charged with the debtes in Lawe nor conscience, but the executors shall be charged of their owne goods

The 11. Chapter

goods & in likewise if Jo. at Noke owe to A. B. xx. li. And A. B. oweth to C. D. xx. li. & after A. B. dieth intestate hauing none other goods but the said xx. li. which the said John at Noke oweth him, yet the said C. D. shall haue no remedy against the said John at No. for he standeth not charged to him in law nor conscience. But the Ordinary in that case must commit Administration of the goods of the sayd A. B. And the said Administratour must leuy the money of the said John at Noke and pay it to the said C. D. And the said Jo. at Noke shall not pay it himselfe because he is not charged therewith to him, and no more me thinketh in this case that he to whom the bequest is made, is neyther charged to him that the money was owing to, in the law or conscience. D. Then shewe mee thy minde by what law it is grounded as thou thinkest that executors be bound to pay debts before legacies, whether is it by the law of God, or by the law of reason, or by the law of man as thou thinkest? S. I think that it is both by the law of reason & by the law of God, for reason will that they shal do first that is best for the testator, and that is to pay debts that his testator is bounde to pay before legacies that he is not bound to. And also by the law of God they are bound to pay the debtes first, for uth they are bound by the law of God to loue their neyghbour, they are bound to do for him that shal be best for him when they haue taken the charge thereto, as executours do when they agree to take the charge of the will of their Testatour
vpon

upon them, and it is better for the testator that his debts be paid (wherefore his soule shall suffer paine) then that his legacies be performed, wherefore he shall suffer no paine for the performing of them.

And that it is to be understood where the legacy is made of his own free will & not where it is made as a satisfaction of any duty. And after the saying of S. Gregory, the very true proove of loue is the deede. But this man is not in that case, for he took neuer the charge upon him to pay the debtes of the Testatour. And therefore he is not bound to them in lawe nor conscience as me seemeth. But rather the executors should haue bin sware ere they had paid the legacies, seeing there were debtes to pay.

D. The executors might no otherwise haue done in this case but to pay the legacies, for the they should haue bin compelled by the law to haue paid, and so they could not haue bin to haue paid the debt upon a contract. And therefore they did wel in performing of that legacy, but hee to whom the legacy was made ought not to haue taken them but ought in conscience to haue suffered them to haue gone to the payment of the debt, & sith he did not so but took them where he had no right to them, it semeth that when he took them, hee took with them the charge in conscience to pay the debt, for sith the executors were compellable by the law to performe that bequest and not to pay the debt; therefore when they performed that bequest, they were discharged thereby against him that the debt was owing too, in the lawe and conscience

The 11. Chapter.

science, and then the charge rested vpon him that tooke the goods where he ought not in conscience to haue taken them, but if it had bin a debt vpon an Obligation or such other debt whereupon remedy hath bin had against the executors by the Law, I there suppose though that the executors had perfourmed the legacy, that yet he to whom the legacie was made and perfourmed, had not bin charged in conscience to the paiment of the debt, for the Executours stood still charged thereto of their own goods, and he to whom the bequest was made was only bound in conscience to repay that he receiued, to the executors, because he had no right to haue receiued it, for against the executours he had no right thereto. S. Then it seemeth in this case that in likewise he to whom the bequest was made, should repay that he receiued to the executors, and then they to pay it rather then he. D. The executors haue no farther medling with it as this case is, for when they perfourmed the bequest they were discharged against both the other in lawe and conscience, & also he to whom the bequest was made, stood not in this case charged to the executors, for against them he had good title by the law, and so this charge standeth onely against him that the debt is owing too: and the same lawe that is in this case vpon a debt vpon a contract is if the testator had done a trespass whereupon he ought to haue made restitution, that is to say, that he to whom the bequest is made, is bounde to make the amendes for the trespassse, for it shoulde bee no discharge to him to pay

pay it againe to the executoꝝ without they paid it ouer, & it were vncerteine to him whether they should pay it or not.

And therefore to be out of peril, it is necessarie that he pay it himselfe, & then he is surely discharged against al men.

¶ The tenth question of the
Student,

Cap. 12.

A Man seised of certein land in his demeane as of fee, hath issue two sonnes and dieth seised, after whose death a straunger abateth, and taketh the profit, and after the eldest sone dieth without issue and his brother bringeth an Aſſiſe of Mortdaunceſter as ſonne & heire to his father, not making mention of his brother and recouereth the lande with damages from the death of his father as he may wel by the Lawe, whether in this caſe is the yonger brother bound in conſcience to pay to the executoꝝ of the eldest brother the value of the profits of the ſayd land that belongeth to the eldest brother in his life or not? D. What is thine opinion therein? S. That like as the ſaid profits belong of right to the eldest brother in his life, and that hee had full authoritie to haue releaſed aſwel the right of the ſayd land as of the ſayd profits, which releaſe ſhoulde haue bin a clere barre to the yonger brother foꝛ euer: That the right of the ſayd damages
which

The 12. Chapter.

which be in the lawe but a chattell, belong to his executors and not to the heire, for no manner of chattell neither real nor personal shal not after the law of the realme discende vnto the heire.

D. Thou saidst in the case next before, that it is not of the law of reason, that a man shall make executors, & dispose his goods by his will, & y^e the executors shal haue y^e goods to dispose, but by the law of man, And if it be left to the determination of the law of man, That in such cases as the law giueth such chattels vnto the Executors, they shal haue good ryght vnto them, and in such cases as the lawe taketh such chattels from them, they bin rightfully taken from them, And therefore it is thought by many that if a man sue a VVrit of right of ward of a Warde that he hath by his owne fee, and dieth hanging the writ, and his heire sue a resummons according to the statut of VVest. second, and recouereth, that in that case the heire shall enioy the Wardship against the executors, and yet it is but a chattell, and they take the reason to be because of the sayd statute, and so might it be ordeined by statute that al Wards should go to the heires & not to the Executors: Right so in this case Gith the lawe is such that the yonger brother shall in this case haue an Aulse of Mortdauncester as heire to his father not making any mention to his elder brother, and reconer damages aswel in the time of his brother as in his owne time, it appeareth that the lawe geueth the right of these damages to the heire, and therefore

foze no recompence ought to be made to the ex-
ecutors, as me semeth, & it is not like to a wite
of Niel, whereas I haue learned in Latin (Gth
our first dialogue) the demandant shal recover
damages only fro the death of his father, if he
ouerliue y Niel, & the cause is, for that the de-
mandat, though his Niel ouerliued his father,
must of necessity make his coueiance by his fa-
ther, & must make himselfe sonne & heire to his
father, & couin and heire to his Niel, & therfoze
in that case if the father ouerliued the Niel, the
abatoz were bounden in conscience to restore to
the executors of the father the profits run in
his time (for no law taketh the from him) but
otherwise it is in this case, as me semeth. S. If
the yonger brother in this case had entred in-
to the land without taking any assise of Mort-
dancer as he might if he would, to whō were
the abatoz then bounden to make restitution
for those profits as thou thinkest? Do. To the
executors of the eldest brother, for in that case
there is no law that taketh them from them, &
therefoze the general ground, which is that al
chatels shal go to y executors, holdeth in that
case: but in this case that ground is broken &
holdeth not, for the reason that I haue made
before, for comonly there is no general ground
in the law so sure, but it faileth in some parti-
cular case.

The xj. question of the Student.

Cap. 13.

A man seised of land in fee taketh a wife, and
after alieneth the land, & dieth, after whose

A. j.

death

The 13. Chapter.

Death his wife asketh her dower, & the alienee refuseth to assigne it vnto her, but after she asketh her Dower againe, and he assigneth it vnto her, whether is the alienee in this case bound in conscience to giue the woman damages for the profits of the lande after her third part from the death of her husband, or from the first request of her dower, or neither the one nor the other? D. What is the law in this case? S. By the law the woman shall recover no damages, for at the common Law the demandant in a writ of Dower should neuer haue recovered damages. But by the Statute of Merton it is ordeined, that where the husband dieth seised, that the woman shall recover damages which is vnderstand the profits of the lande sith the death of her husband, and such damages as she hath by the forbearing of it, but in this case the husband died, not seised, wherefore she shall recover no damages by the law. Doct. Yet the law is, that immediatly after the death of her husbande the wife ought of right to haue her dower, if she aske it though her husbande die not seised. Sen. That is true.

Do. And sith shee ought to haue her dower from the death of her husband, it seemeth that she ought in conscience to haue also the profits from the death of her husbande, though shee haue no remedy to come to them by the Lawe, For me thinketh that this case is like to a case that thou putttest in our first Dialogue in Latin, the xvij. Chapter, That if a Tenant for term of life be disseised and die, and the disseisor dyeth, and his heire entreth and taketh the profits,

sits, and after he in the reuerſion recouereth the lands againſt the heire, as he ought to doe by the Law, that in that caſe he ſhall recouer no damages by the Law. And yet thou diddeſt agree that in that caſe the heire is bound in conſcience to pay the damages to the demandant, and ſo me thinketh in this caſe that the feoffee ought in conſcience to pay the damages from the death of her husband, ſeeing that immediatly after his death ſhe ought to haue her doſwer. *Scu.* Though ſhe ought to be indowd immediatly after the death of her hulbande, yet ſhe can lay no default in the feoffee till ſhe demand her doſwer vpon the ground, and that the tenant be not there to aſſign it, or if he be there that he will not aſſigne it: for he that hath the poſſeſſion of land whereunto any woman hath title of doſwer, hath good authoritie as againſt her to take y^e profits til ſhe require her doſwer: for euery woman that demandeth doſwer affirmeth the poſſeſſion of the tenant as againſt her, and therfore although ſhe recouer by action, ſhe leueth the reuerſion alway in him againſt whom ſhee recouereth, though he be a diſſeiſor and bringeth not the reuerſion by her recovery to him y^e hath right as other tenants for terme of life doe. And for this reaſon it is that the tenant in a ſwite of Doſwer, where the husband dyed ſeyled if he appeare the firſt day, may ſay to excuſe himſelfe of damages that hee is and ail times hath bin readie to yelde Doſwer if it had bin demanded, and ſo he ſhal not be receiued to do in a ſwite of couſnage, neither in the caſe that thou remembreſt

The 13. Chapter.

aboue, for in both cases the tenants be supposed
 by the writ to be wrong doers, but it is not so
 in this case, & so me thinketh it clere that the
 lessee in this case shal neuer be bound by law, nor
 conscience to yelde damages for the time that
 passed before the request, but for the time after
 y request is greater doubt, howbeit some thin-
 keth him not there bound to yeld damages, be-
 cause his title is good, as is laid before, & that
 it is her default that she brought not her acti-
 on. D. As vnto the time before the request I
 hold me content with thine opinion so that he
 assign the dower when he is required, but whe
 he refuseth to assigne it, then I think him bound
 in conscience to yeld damages for both times,
 though he shall none recover by the law. And
 first as for the time after the refusell, it appea-
 reth evidently that when he denied to assigne
 her dower, he did against conscience, for he did
 not y he ought to haue don by y law, ne as he
 would should haue bin done to him, & so after y
 request he holdeth her dower from her wrong-
 fully, and ought in conscience to yeld damages
 therfore. And as to the default y thou assignest
 in her, that she took not her action, y forceth li-
 tle, for actions need not but where y party will
 not do that he ought to do of right. And for y
 he ought of right to haue done & did it not, he
 can take no aduantage, & then as to the dama-
 ges before the request, mee thinketh him also
 bounden to pay them, for when he was requi-
 red to assigne dower & refused, It appeareth
 that he neuer intended to yeld dower from the
 beginning, & so he is a wrong doer in his owne
 cons

conscience: & moreover, if the husband die seised, the law is such, that if the tenant refuse to assigne dower when he is required, wherefore the woman bringeth a writ of dower against him that in y^e case the woman shall recover damages as wel for y^e time before y^e request as after, & yet he ought not in that case after thine opinion to have yelded any maner of damages if he had bin ready to assigne dower when it was demanded, as some thinketh here. S. The cause in the case that thou hast put, is for that the statut is general that the demandant shall recover damages, where y^e husband died seised, & that statut hath bin alway construed that where the tenant may not say y^e he is, & hath bin alway ready to yeld dower &c. that the demandant shall recover damages from the death of her husbande. But in this case there is no law of the Realme that helpeth for the demandant neither comon law, nor statute: & furthermore though it might be proued by his refuse y^e he neuer intended from the death of y^e husband to assigne her dower, yet that proueth not, but that he had good right to take the profits of her third part for the time, as wel as he had of his owne two parts, til request be made, as is aforesaid, & some thinketh that notwithstanding the denial, he is not bound to yeld damages in this case, but for the time of the request, & not for the time before. D. For this time I am content with thy reason.

¶ The xij. question of the Student

Cap. 14.

¶ A man seised of certaine lands knowing that another hath good right and title to them le-

th. 11j.

ueth

The 14. Chapter.

nieth a fine with Proclamation to the intent
 he would extinct the right of the other man, &
 the other man maketh no claime within the
 v. yerres, whether may he that leuied the fine
 hold the land in conscience as he may do by the
 law? D. By this question it seemeth that thou
 doest agree that if he that leuied the fine had
 no knowledge of the other mans right, that
 his right should then be extincted by the fine
 in conscience? Stu. Ye verely, for thou diddest
 shew a reasonable cause why it should be so in
 our first diolague in Latin the xxiiij. Chapter,
 as there appeareth. But if he that leuied a fine
 and that would extinct the right of another,
 knowing that the other had more right then
 he, then I doubt therein for I take thine opi-
 nion in our first Dialogue to be vnderstood in
 conscience, where he that would extinct former
 rightes by such a fine with Proclamation,
 knoweth not of any former title, but for his
 more suertie if any such former right be, he tak-
 keth the remedy that is ordeined by the lawe.
 D. Whether doest thou meane in this case that
 thou puttest now that he y^e hath right, know-
 eth of the fine and wilfully letteth the v. yerres
 passe without claime or that he knoweth not
 any thing of the fine?

Stu. I pray thee let me know thine opinion
 in both cases and whether thou thinke that
 he that hath right be barred in either of the
 said cases by conscience as he is by the law or
 not. Doct. I will with good will hereafter
 shew thee my minde therein: but at this time
 I pray thee giue a litle sparing and procede
 now

now for this time to some other question.

¶ The xiiij. question of the Student.

Cap. 15.

A Man seised of certaine landes in fee hath a daughter, which is his heire apparant, the daughter taketh a husband, and they haue issue, the father dieth seised, & the husband, as sone as he heareth of his death, goeth toward the land to take possession, & befoze he can come there, his wife dieth, whether ought he to haue the land in conscience for terme of his life, as Tenant by the curtesie, because he hath done that in him was to haue had possess. in his wifes life, so that he might haue bin tenant by the curtesie according to the law, or that he shall neyther haue it by the law, nor conscience. Do. ¶ Is it clerely holden in the law that he shal not be tenant by the curtesie in this case, because he had not possession in deed?

Sr. Ye verely, & yet vpon a possession in law a woman shal haue her dower, but no man shal be tenant by the curtesie of lande, without his wife haue possession in deed. **D.** A man shal be tenant by the curtesie of a rent though his wife die befoze the day of paiement, & in likewise of an Adowson though she die befoze the avoidance. **Sr.** That is truth, for the old custome & Maxime of the law is, that he shal be so, but of land there is no Maxime that serueth him but his wife haue possession in deed. **D.** And what is the reason that there is such a maxime in the law

law of the rent & of the aduowson, neither the
of land, when the husband doth asmuch as in
him is to haue possession and cannot. Sr. Some
assigne the reason to be because it is impossible
to haue possession in deede of the rent or of ad-
uowson before the day of paiement of the rent,
or before the auoidāce of the aduowson. D. And
so it is impossible that he shal haue possession
in deed of lande if his wife die so soone that he
may not by possibility come to the lande after
his fathers death, & in her life as the case is. Sr.
The law is such as I haue shewed thee before
& I take the verie cause to be for that there is
a Maxime serueth for the rent and the aduow-
son, & not for the lands, as I haue said before,
and as it is said in the 8. Chap. of our first dia-
logue, it is not alway necessary to assigne a
reason or consideration why the Maximes of
the law of Englande were first ordeined & ad-
mitted for maximes, but it suffiseth that they
haue bin alway taken for law and that they be
neither contrary to the law of reason, nor to the
law of God as this Maxime is not, & therfore
if the husband in this case be not holpen by con-
science, he cannot be holpen by the law. D. And
if the law help him not, conscience cannot help
him in this case, for conscience must alway be
grounded vpon some lawe, & it cannot in this
case be grounded vpon the lawe of reason, nor
vpon the law of God, for it is not directly by
those laws, that a man shalbe tenat by curte-
sy, but by the custome of the realme, And ther-
fore if the custome help him not, he can nothing
haue in this case by conscience, for conscience
neuer

neuer resisteth the law of man, nor addeth no-
 thing to it, but where the law of man is in it
 selfe directly against the law of reason, or els
 the law of God, & then properly it cannot bee
 called a law but a corruption, or where the ge-
 neral grounds of the law of man worketh in a-
 ny particuler case against the said lawes as it
 may do, and yet the law good, as it appeareth in
 diuers places in our first dialogue in latin, or
 elswhere, there is no law of man prouided for
 him that hath right to a thing by the law of rea-
 son, or by the law of God. And then sometime
 there is remedy given to execute that in con-
 science, as by a Sub pena, but not in al cases: for
 sometime it shalbe referred to the conscience of
 the party, & vpon this ground (that is to say)
 that when there is no title given by the com-
 mon law, that there is no title by conscience,
 There be diuers other cases, whereof I shall
 put some for an example. As if a Reuerſion bee
 graunted vnto one, but there is no atturment,
 or if a new rent be graunted by word without
 dede: there is no remedy by conscience vnlesse
 the said grants were made vpon consideration
 of mony, or such other. And in likewise where
 he that is seised of lands in Fee simple maketh a
 wil thereof, that wil is void in conscience, be-
 cause the ground serueth not for him whereby
 the conscience should take effect, that is to say,
 the law. And if the tenant make a Feffement of
 the land that he holdeth by priority, and taketh
 estate againe, and dieth (his heire within age)
 the Lord of whom the land was first holden by
 priority, shal haue no remedy, for the body by
 consci-

The 16. Chapter.

conscience, for the law þ first was with him, is now against him, & therfore cōsciēce is altered in likewise as the law altereth, And diuers & many cases like be in þ law that were too long to rehearse now. And thus me thinketh that if the law be as thou saist, þ husband in this case hath neither right by the law, nor conscience.

¶ The xiiij. question of the Student.

Cap. 16.

A Rent is granted to a man in fee to perceiue of two acres of land, & after the grantor enfeoffeth the graunter of one of the said acres, whether is the whole rent extinct thereby in conscience as it is in the law? D. This case is somewhat vncertain: for it appeareth not whether the grantor enfeoffed him on trust, or that he gaue the acre to him of his meere motion, to the vñe of the said feoffee, or els that the feoffement was made vpon a bargaine, & if it were but only a feffement of trust, then I think the whole rent abideth in conscience though it be extinct in the law, & first that it continueth in that case in conscience, for the part that the grantee hath to the vñe of the grantor, it is euident, for he may not take the profits of þ lād & it is against conscience that he should leese both, & in likewise it abideth in conscience for the acre that remaineth in þ hands of the grantor, though it be extinct in the law, For there was a default in the graunter that he woulde make the feffement to þ grantee, as wel as there was

was in the grantee to take it. And it is no conscience that of his owne default he should take so great availe to be discharged of the whole rent, seeing that the feffement was made to his owne vse. And if the feffement were made upon a Bargain & a Contract between them, then it is to see whether they remembred the rent in their bargain, or that they remembred it not, & if they remembred in their bargain & contract, then conscience must follow the bargain, As thus, if they agreed that the graunter shoulde haue the rent after the portion in y other acre, then by conscience he ought to haue it though it be extincted in the lawe. And if they agreed that the whole rent should be extinct and made their price according, then it is extinct in law and conscience, & if they clerely forget it & made no mention of it, or for lacke of cunning took the law to be that it should continue in the other acre after the portion, & made their price according, pondering only the value of the acre that was sold: then me thinketh, it doth continue in conscience after the portion, & if the feffement were made to the vse of the grantee then it semeth the whole rent is extinct in law & conscience. S. Then take this to be the case, that is to say, that the feffement was made to the vse of the grantee. D. What is then thine opinion therein? S. That the rent should abide in conscience after the portion for the acre remaining in y hands of the grantor, notwithstanding it be extinct in the law. D. The shew me thine opinion in this that I shal aske thee. Of what law is it that grauntes of rent and of such other

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The 16. Chapter.

profits out of lands may be made and that they
 shalbe good & effectual to the grantees, whether
 is it by the law of reason or by the law of god,
 or by the custome & law of þ realme: s. I thinke
 it is by the law of reason, for by the same reaso
 that a mā may giue away al his lands, he may
 as it seemeth giue away the profits thereof or
 graunt a rent out of the land if he wil. D. But
 then by what law is it that a man may giue a-
 way his lands? I trow by none other law but
 by the custome of the Realme, for by statute al
 alienations and gifts of lands may be prohibi-
 ted, & the that reason proueth not that grants
 of the profits of land or of a rent should be good
 because he may alien the land, if alienations of
 land be by custome & not by the law of Rea-
 son, as I suppose it is, whereof I haue tou-
 ched somewhat in our first Dialogue in Latin
 the xix. Chap. And also if Graunts should
 haue their effect by the law of Reason, then
 Reason would they should be good by the only
 word of the grauntoz aswell as by his Deed:
 And that is not so, for without deed þ grant
 of rent is void in law: and to me thinketh that
 graunts haue their effect onely by the Law of
 the Realme. St. Admit it be so, what meanest
 thou thereby? Do. I shal shew thee hereafter,
 as I shal shew thee the cause why I think the
 rent is extinct in conscience, aswell as in law.
 And first as I take it, the reason why it is ex-
 tinct in the law, is because the rent by þ first
 graunt was going out of both acres, and was
 not going part out of the one acre, & part out
 of thother, but the whole rent was going out
 of

of both, and then when the grantee of his own folly wil take estate in the one acre, whereby that acre is discharged, then thother acre also must be discharged, vnles it should be apporcioned: & the law wil not that any Apporcionment should be in that case, but rather inas much as y^e partie hath by his own act discharged thone acre, the law discharged also thother rather then to suffer the other acre to be charged contrarie to the forme of the graunt, For this rent beginneth al by the act of the partie. And as I haue heard, it is called a rent against common right. Wherefore it is not fauored in the law as a rent seruice is: & then mee thinketh that forasmuch as it is not grounded by the law of reason, that grants of rent should be made out of land, but by custome & law of the realm, as I haue said before: that so in like wise it remaineth to the law & custome of the realme, to determine how long such rents shal continue, And when the law iudgeth such rent to be voide, I suppose that so doth conscience also, except the iudgment of the law be against the law of reason or the law of God, as it is not in this case, For in this case he that taketh the fessement hath profit by the fessement, and knoweth y^e he hath such a rent out of the land, & that this purchase should extinct it: whereby it appeareth that he assenteth vnto the Law, whereto he was not compelled, and that is his owne act and his owne default so to do, which shal extinct his whol rent aswel in conscience as in law. But if hee haue no profit of the land or be ignorant that hee hath such a rent out of the
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The 16. Chapter.

profits out of lands may be made and that they
shalbe good & effectual to the grantees, whether
is it by the law of reason or by the law of god,
or by the custome & law of þ realme: s. I thinke
it is by the law of reason, for by the same reaso
that a mā may giue away al his lands, he may
as it seemeth giue away the profits thereof or
graunt a rent out of the land if he wil. D. But
then by what law is it that a man may giue a-
way his lands? I trow by none other law but
by the custome of the Realme, for by statute al
alienations and gifts of lands may be prohibi-
ted, & thē that reason proueth not that grants
of the profits of land or of a rent should be good
because he may alien the land, if alienations of
land be by custome & not by the law of Rea-
son, as I suppose it is, whereof I haue tou-
ched somewhat in our first Dialogue in Latin
the xix. Chap. And also if Graunts should
haue their effect by the law of Reason, then
Reason would they should be good by the only
word of the grauntoz, aswel as by his Deed:
And that is not so, for without deed þ grant
of rent is void in law: and to me thinketh that
graunts haue their effect onely by the Law of
the Realme. St. Admit it be so, what meanest
thou thereby? Do. I shal shew thee hereafter,
as I shal shew thee the cause why I think the
rent is extinct in conscience, aswel as in law.
And first as I take it, the reason why it is ex-
tinct in the law, is because the rent by þ first
graunt was going out of both acres, and was
not going part out of the one acre, & part out
of thother, but the whole rent was going out
of

of both, and then when the grantee of his own folly wil take estate in the one acre, whereby that acre is discharged, then thother acre also must be discharged, vnles it should be apporcioned: & the law wil not that any Apporcionment should be in that case, but rather inas much as y^e partie hath by his own act discharged thone acre, the law discharged also thother rather then to suffer the other acre to be charged contrarie to the forme of the graunt, For this rent beginneth al by the act of the partie. And as I haue heard, it is called a rent against common right. Wherefore it is not fauored in the law as a rent seruice is: & then mee thinketh that forasmuch as it is not grounded by the law of reason, that grants of rent should be made out of land, but by custome & law of the realm, as I haue said before: that so in like wise it remaineth to the law & custome of the realme, to determine how long such rents shal continue, And when the law iudgeth such rent to be voide, I suppose that so doth conscience also, except the iudgment of the law be against the law of reason or the law of God, as it is not in this case, For in this case he that taketh the fessement hath profit by the fessement, and knoweth y^e he hath such a rent out of the land, & that this purchase should extinct it: whereby it appeareth that he assenteth vnto the Law, whereto he was not compelled, and that is his owne act and his owne default so to do, which shal extinct his whol rent aswel in conscience as in law. But if hee haue no profit of the land or be ignozant that hee hath such a rent out of the
the

The 16. Chapter.

rent out of the land which is called ignorance of the deede, or if he be ignorant that the lawe would extinct his whole rent therby, which is called ignorance of the law, then me thinketh it remaineth in conscience after the portion. S. Ignorance of the law or of the deede helpeth not but in few cases in the law of Englad. D. And therfore it must be reformed by conscience, that is to say, by the law of reason, for whe the general maximes of the law be in any particuler cases against y^e law of reason, as this Maxime seemeth to be, because it excepteth not the that be ignorant though it be an ignorance inuincible, then doth it not agree with the law of reason. S. We thinketh that ignorance in this case helpeth little, for whe a man buyeth any land or taketh it of the gift of any other, he taketh it at his peril, so that if the title be not good, ignorance cannot helpe, for the buier must beware what he buieth, & so in this case if the taking of one acre shoulde extinct the whole rent in conscience, if he were not ignorant, so me thinketh it shold in likewise extinct it also though he be ignorant of the law or of the deede: for every man must be compelled to take notice of his owne title, & out of what land his rent is going, & so me thinketh ignorance is but litle to be considered in this case. D. If a man buy land or taketh it of the gift of an other it is reason that he take it with the perill though he be ignorant that an other hath right, for it were not standing with reason that his ignorance should extinct the right of an other, but in this case there is no doubt of the right of the land, but

but al the doubt is how the rent shalbe ordred in conscience, if he that hath the rent take part of the land: & therin is great diuersity between him that is ignozant in the law, and him that knoweth the law, & knoweth wel also that he hath a rent out of the land and other. For I put case that he asked counsaile of the grauntoz himselfe therin, & he saying as he thought, told him that the taking of the one acre should not extinct the rent but for the portion, & so he thinking the law to be, toke the other acre of his gift: As it not reasonable in that case, that the ignozance should saue the rent in conscience: S. Yes for there the grauntoz himselfe is party to his ignozance and in maner the cause thereof. D. And me thinketh al is one if any other had shewed him so, or if he asked no counsaile at all, for me thinketh it suffileth in this case that he be ignozant of the law: for why, it is moze hard in this case to proue the rent should be extinct in conscience, though he knew it should be extinct in the law, then to proue that it continueth in conscience after the portion if he be ignozant, & thou thy selfe were of the same opinion as it appeareth in the beginning of this present Chapter, but if the opinion were true, it would be hard to proue but that the said general Maxime were wholly against reason, & then it were void, but I haue sufficiently answered thereto as me seemeth, & that it is extinct in the lawe, & also in conscience, except ignozance help it to be apporcioned. And mozeouer, forasmuch as apporcionment is suffered in the lawe where part of the land

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The 17. Chapter.

discendeth to the graunter, because no default be assigned in him: some think no default can be assigned in him in conscience, when he is ignorant of the law or of the dede, though such ignorance do not excuse in the law of the Realme. Stu. I am content with thy opinion in this behalf at this time.

¶ The 15. Question of the Student.

Chapt. 17.

A Man graunteth a Rent charge out of 2. acres of land, and after the grauntoz infesseth H. Hart in one of the said two acres to the vse of the said Henrie Hart, and of his heires, and after the said Henrie Hart intendinge to extinct all the rent, causeth the said acre to be recouered against him to his owne vse in a writ of Entrie in the Dost in the name of the graunter and of other after the common course, the graunter not knowing of it, & by force of the said recouerie the other demaundants enter and die living the graunter, so that the graunter is seised of all by the survivor to the vse of the said H. H. Whether is the said rent extinct in conscience in part, or in all, or no part? D. I am in doubt of y^e law in this case. S. In what point? D. Whether the whol rent be going out of the acre that remaineth in the hands of the grauntoz, because the graunter cometh to the land by way of recovery, or y^e it shalbe extinct in law but after the portion, because y^e graunter hath not the acre to his owne vse, or that the whole

Whole rent shalbe extinct in the law. **St.** The rent cannot be whole going out of the acre that the grauntoz hath, for this recouerie is vpon a scined title, and the grauntoz because he is straunge to it shall be well receiued to falsifie it. But if the recouerie had bin vpon a true title, then it had bin as thou saist, if the grauntee recouer the one acre against the grauntoz vpon a true title, the grauntoz shall pay the whole rent out of that land that remaineth in his hand, and as to the vse it maketh no matter to the grauntoz as to the lawe in whom the vse be, for the possession without the vse extinguisheth the whole rent as against him in the lawe aswell as if the possession and vse were both ioined together in the grauntee. **Do.** Then me thinketh that the said Henry Hart is bounde in conscience to pay the grauntee the rent after the portio of that acre that was recouered, for it cannot stande with conscience that he should loose his rent and haue no profits of the land. **St.** Then of whom shall he haue the other portio of his rent? **D.** As the lawe clere that the acre that the grauntoz hath shalbe in this case discharged in the lawe? **S.** I take the lawe so.

D. And what in conscience? **St.** As against the grantoz me thinketh also it is extinct in conscience for the reaso that thou hast made in the xvi. Chapter, for it is all one in conscience in this case as against the grauntour, whether the recovery were to the vse of the grauntee or not, specially seeing that the grauntoz is not priuy to the recovery, for the unity of possessio.

The 18. Chapter.

is the cause of extinguiſhment of the rēt againſt the grauntoꝝ both in law & conſcience, where ſoever the uſe be, But if the grauntoꝝ had bin priuy to the cause of the extinguiſhment, as he was in the caſe that I put in the laſt chapter, where the grauntoꝝ enfeoffed the grauntee of one of the acres, to the uſe of the grantee, there it is not extinct in conſcience in that acre that remaineth in the hands of the grantor, though it be extincted in the lawe, becauſe he was priuie to the extinguiſhment himſelfe, but he is not ſo in this caſe, & therfore it is extinct againſt him in law & cōſcience. And therfore me thinketh that the grauntee ſhal in conſcience haue the whole rent of the ſaid H. Hart, that cauſed the ſaid recovery to be had in his name, for in him was all the default, but it is to be vnderſtood that in all the caſes, where it is ſaid before in this chapter, or in the chapter next before, that the rent is extinct in the law, and not in conſcience, that in ſuch caſe, al the remedies that the party might firſt haue had for the rent at the common law by diſtreſſe, aſſiſe, or otherwiſe, are determined, and the party that ought to haue the rent in conſcience, ſhal be driuen to ſue for his remedy by Sub pena. D. I am cōtent with thy conceipt in this matter for this time.

¶ The xvj. queſtion of the Student,

Cap. 18.

.. A Villeine is graunted to a man for terme of life, the villaine purchaſeth landes to him
and

and to his heires, the tenant for terme of life entreth, in this case by the law he shall enjoy the lands to him & to his heires, whether shall he do so in likewise in conscience?

D. He thinketh it first good to see whether it may stande with conscience that one man may claime an other to be his villein, and that he may take from him his lands and goods, and put his bodie in prison if he will, it seemeth he loueth not his neighbor as himselfe that doth so to him.

Str. That law hath bin so long vsed in this Realme and in other also, and hath bin admitted so long in the lawes of this Realme, and of diuers other lawes also and hath bin affirmed by Bishops, Abbotts, Priors, and many other men both Spirituall and Temporal which haue taken aduantage by the sayde lawe, and haue seised the landes and goods of their villeines thereby, and call it their right enheritance so to doo, that I thinke it not good now to make a doubt, ne to put it in argument whether it stand with conscience or not, and therefore I pray thee, admitting the lawe in that behalfe to stande in conscience, shewe me thine opinion in the question that I haue made.

Do. Is the lawe clere that he that hath the villeine but only for y^e terme of life, shall haue the lands that that villeine purchaseth in fee to him and to his heires?

Str. Ye verely I take it so.

D. I should haue taken y^e law otherwise, for

W. ij.

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The 18. Chapter.

if a seignioꝝ be graunted to a man foꝝ terme of life and the tenant attourne, & after the lande escheate & the tenant foꝝ terme of life entreth, he shal haue there none other estate in the land then he had in the seignioꝝ, and me thinketh that it should be like law in this case, & that the Lord ought to haue in the land, but such estate as he hath in the villeine. **Sr.** The cases be not a like, foꝝ in the case of the escheate the tenant foꝝ terme of life of the seignioꝝ, hath the lands in the lyeu of the seignioꝝ, that is to say, in the place of the seignioꝝ, and the seignioꝝ is clerely extinct, but in this case he hath not the land in the lien of the villeine, foꝝ he shal haue the villein still, as he had before, but he hath the lands as a profit come by means of the villein, which he shal haue in like case as the villein had them, that is to say, of all goods and chatels he shal haue the whole property & of a lease foꝝ terme of yeres he shal haue the whole terme, and foꝝ terme of life he shal haue the same estate, the Lord shal haue the lande during the life of the villeine and of land in fee simple, and of an estate taile that the villeine hath, the Lord shal haue the whole fee simple, although he had the villein but only foꝝ terme of yeres, so that he entre oꝝ sette according to the law before the villeine alien, oꝝ els he shal haue nothing.

D. Merely, and if the lawe be so, I think conscience follosweth the lawe therein, foꝝ admitting that a man may with conscience haue an other man to be his villein, the iudgmēt of the lawe in this case (as to determine what estate the

the

the Lord hath in the land by his entre is neither against the law of reason nor against the law of God, and therefore conscience must follow the law of the Realme. But I pray thee let me make a little digression to here thine opinion in an other case somewhat pertaining to the question, and it is this, If an Executor have a villeine, that his testator had for terme of yerres, & he purchaseth landes in fee, and the executor entreth into the lād, what estate hath he by his entre? S. A Fee simple, but that shalbe to the behouse of the testator, & shalbe an assets in his hands. D. Well then I am content with thy conceipt at this time in this case, and I pray thee procede to another question. S. Forasmuch as it appeareth in this case and in some other before that the knowledge of the law of England is right necessarie for the good ordering of conscience: I would heare thine opinion, If a man mistake the law, what danger it is in conscience for y mistaking of it. D. I pray thee put some case in certain therof that thou doubttest in, and I will with good will shewe thee my minde therein, or els it will be somewhat long or it can be plainly declared, and I would not be tedious in this writing.

¶ The xvij. question of the Student.

Cap. 19.

A Man hath a Villeine for terme of life, the villeine purchaseth landes in fee as in the case of

M. ij.

of

The 19. Chapter.

of the last Chapter, and the tenant for terme of life entreth, and after the villaine dyeth, he in the reuerſion pretending that the tenant for terme of life hath nothing in the lād, but for terme of life of the villaine, asketh counsaile of one that sheweth him that he hath good right to the land, and that he may lawfully enter, and through that counsaile he in the reuerſion entreth, by reason of the which entre, great suites and expenses folloſw in the lawe, to the great hurt of both parties, what danger is this to him that gaue the counsaile? Do. Whether meanest thou that he that gaue the counsaile, gaue it willingly against the lawe, or that he was ignozant of the lawe? Stu. That hee was ignozaunt of the lawe, for if he knew the law, and gaue counsaile to the contrarie, I thinke him bound to restitution both to him against whom he gaue the counsaile, and also to his clyent (if he would not haue sued but for his counsaile) of al that they be dampniſied by it.

D. Then will I yet further aske thee this question, Whether he of whom he asked counsaile gaue himſelfe to learning, and to haue knowledge of the law after his capacitie, or that hee tooke vpon him to giue counsaile, and tooke no studie competent to haue learning: for if he did so, I thinke he be bounden in conscience to restitution of all the costes and damages that he sustained to whom he gaue counsaile, if he would not haue sued but through his counsaile, and also to the other partie, But if a man that hath taken sufficient studie
in

in the Law, mistake the Lawe in some point that is hard to come to the knowledge of, he is not bounden to such restitution, for he hath done that in him is, but if such a man knowing the lawe giue counsaile against the lawe, he is bound in conscience to restitution of costs and damages (as thou hast said before) and also to make amends for the vnt ruth.

S. What if he aske counsaile of one that he knoweth is not learned and he giueth him counsaile in this case to enter, by force whereof he entresth? D. Then be they both bounde in conscience to restitution, that is to say, the partie if he be sufficient, and els the Counsaillour because he assented and gaue Counsaile to the wrong.

St. But what is the counsaillour in that case bounden to him that he gaue counsaile to? D. To nothing, for there was as much default in him that asked the counsaile, as in him that gaue it, for he asked counsaile of him that he knew was ignozant, and in the other was default for the presumption, that he would take vpon him to giue counsaile in that he was ignozant in.

Sen. But what if he that gaue the counsaile knew not but that he that asked it, had trust in him, that he could and would giue him good counsaile, and that he asked counsaile for to order well his conscience, howbeit, that the truth was, that he could not so doe?

D. Then is he that gaue the counsaile bounde to offer to the other amends, but yet the other may not take it in conscience.

M. iij.

S. That

The 19. Chapter.

S. That were somewhat perillous, for hap-
pely he would take it though he haue no right
to it, except the world be wel ameded. **D.** What
thinkest thou in that amendement. **S.** I trust
euery man will do now in this world as they
would be done to, speake as they think, restore
where they haue done wrong, refuse money if
they haue no right to it, though it be offered
them, do that they ought to do by conscience,
and though that they cannot be compelled to it
by no law, and that none will giue counsaile,
but that they shall thinke to be according to
conscience, and if they do, to do that they can
to refozme it, and not to entermit themselves
with such matters as they be ignorant in, but
in such cases to send them that aske the coun-
saile to other, that they shall thinke be more
cunning then they are.

D. It were very well if it were as thou hast
said, but the more pittie, it is not alway so,
And especially there is great default in giuers
of counsaile, for some for their owne lucre and
profit giue counsaile to comfort other to sue
that they knowe haue no right, but I trust
there be but fewe of them, and some for dread,
some for fauor, some for malice, and some vpon
considerations, and to haue as much done for
thē an other time to hide the truth. And some
take vpon them to giue counsaile in that they
be ignorant in, and yet when they knowe the
truth will not withdraue that they haue mis-
done, for they thinke it should be greatly to
their rebuke, and such persons folloew not this
counsaile that saith, That wee haue vnadvisedly
done,

done, let vs with good aduise reuoke againe. S. And if a man giue counsaile in this realme after as his learning and conscience giueth him, and regardeth not the lawes of the realme, giueth he good counsaile? Do. If the lawe of the Realme be not in that case against the law of God nor against the law of reason, he giueth good counsaile, For every man is bound to folloewe the law of the country where he is, so it be not against the said lawes, and so may the cases be, that he may binde himselfe to restitution. Stu. At this time I will no further trouble thee in this question.

¶ The xviii. question of the Student.

Cap. 20.

If a man of his meere motion giue landes to Henry Hart and to his heires by Indenture vpon a Condition that he shal yerely at a certain day pay to J. at Stile out of the same lād a certeine Rent, and if he do not, that then it shalbe lawfull to the said Jo. at Stile to enter ec. if the rent in this case be not paid to John at Stile, whether may the said John at Stile enter into the lands by conscience, though he may not enter by the law? May he not enter in this case by the law, with the wordes of the Indenture be that he shall enter? S. No verely, For there is an auncient Maxime in the law that no man shall take aduantage in a condition but he that is partie or priue to the condition, and this man is not party nor priue where=

The 20. Chapter.

Wherefore he shall haue no aduantage of it.

D. Though he can haue no aduantage of it as party, yet because it appeareth evidently that that intent of the giuer was, that if he were not paid of the rent that he shoulde haue the land: It semeth that in conscience he ought to haue it though he cannot haue it by the lawe.

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S. In many cases the intent of the partie is void to all intents if it be not grounded according to the law. And therefore if a man make a lease to another for terme of life, and after of his mere motion he Confirmeth his estate for terme of life to remaine after his death to another and to his heires, In this case that remainder is void in lawe and conscience, for by the law there can no remainder depend vpon no estate, but that the same estate beginneth at the same time that the remainder doth, And in this case the estate began before, and the confirmation enlarged not his estate, nor gaue him no new estate, But if a lease be made to a man for terme of an other mans life, and after the lessor onely of his mere motion confirmeth the land to his lessee for terme of his owne life, the remainder ouer in fee, this is a good remainder in the lawe and conscience, and so men thinketh the intent of the partie shall not be regarded in this case. D. And in the first case that thou hast put, me thinketh though it passe not by way of graunt of that, yet it shall passe, as by the way of remainder of the reuerſion, for euery deed shall be taken most strong against the graunto, and the taking of the deed in this case is an attornment in it selfe. S. That cannot

not be, for he in the remainder is not party to the deed, and therefore it cannot be taken by the way of graunt of the reuerſion, for no graunt can be made but to him that is party to the deed, except it be by way of remainder, & therefore if a man make a lease for terme of life, & after the lesſor graunt to a ſtranger that the tenant for terme of life ſhal haue the land to him and to his heires, that graunt is void if it be made onely of his mere motion without recōpence. And in likewise if a man make a lease for terme of life, and after graunt the reuerſion to one for terme of life, the remainder ouer in fee, and the tenant atturneth to him that hath the estate for terme of life only, intending he onely ſhould haue aduantage of the graunt, his intent is boide and both ſhall take aduantage thereof, & the attournement ſhalbe taken good, according to the graunt, And ſo in this caſe though the feoffour intended that if the rent were not paid, that the ſtranger ſhould enter, yet becauſe the law giueth him no entre in that caſe, that intent is void and the ſame ſtranger ſhal neither enter into the land by law nor conſcience. Do. What ſhall then be done with that land as thou thinkeſt after the condition broken? S. I thinke that the leſſor in this caſe may lawfully reenter, for when the feoffement was made vpon condition that the leſſee would pay a rent to a ſtranger, in thoſe words is concluded in the lawe, that if the rent were not paid to the ſtranger that the feoffour ſhould reenter, for thoſe words vpon condition imply ſo much in the law though it be not expreſſed.

And

The 21. Chapter.

And then when the feffor went further & said that if the rent were not paid that the stranger should enter, those words were void in þe law, and so the effect of the deed stood vpon the first words wherby the feoffor may reenter in law & conscience, but if the first words had not bin conditional, I would haue holden it the greater doubt. D. I pray thee put the case thereof in certeine with such words as be not conditionel that I may þe better perceiue what thou meanest therein.

¶ The xix. question of the Student.

Cap. 21.

A Man maketh a Feoffement by deed indented, and by the same dedde it is agreed, that the feoffee shall pay to A. B. & to his heires a certeine rent yerely at certeine daies, and that if he pay not the rent, then it is agreed that A. B. or his heires shal enter into the land, and after the feoffee paieth not the rent, then the questiō is, who ought in conscience to haue this land and rent. D. Ere we argue what conscience wil, let vs know first what the law wil therein. S. I thinke that by the law neither the feoffor ne yet the said A. B. shall neuer enter into the land in this case for nonpayment of the rent, for there is no reentre in this case given to the feoffour for not paiement of the rent as there is in the case next before, & the entre that is given to the said A. B. for not painmēt thereof is void in the law because he is estrange to the
the

the deed as it appeareth also in the next Chapter before. And therefore me thinketh that the greatest doubt in this case is to see to what vse this feoffement shalbe taken.

D. There appeareth in this case as thou hast put it, no consideration ne recompence giuen to the feoffour, whereupon any vse may be deriued, and if the case be so in deede, and that the feoffour declared neuer his mind therein, to what vse shall it then be taken? S. I thinke it shalbe taken to be to the vse of the feoffee as long as he paieth the rent, for there is no reason why the feoffee should be buied with payment of the rent hauing nothing for his labor, ne it may not conueniently be taken that the intent of the feoffour was so, except he expressed it, and then it must be taken that he intended to recompence the feoffee for the business that he should haue in the payment ouer, and by the words following his intent appeareth to bee so as me thinketh, for if the rent were not paid, he would that A. B. should enter, and so it seemeth he enteded not to haue any vse himselfe, and thus me seemeth this case should vary from the common case of vles, that is to say, if a man seised of land make a feoffement thereof, & it appeareth not to what vse the feoffement was made, ne it is not vpon any bargain or other recompence, then it shalbe taken to be to the vse of the feffour, except the contrary can be proued by some bargaine, or other like, or that his entent at the time of the liuery of seison was expressed that it should bee to the vse of the feoffee or of some other, and then it shall

The 21. Chapter.

shal go according to his intent, but in this case
me thinketh it shalbe take that his intent was
that it should first be to the vse of the feoffee for
the cause before reherſed except the contrarie
can be proued, & so that knowledge of the intet
of the feffor is the greatest certaintie for know-
ledge of the vse in this case as me seemeth: but
when the feffour goeth further and saith that
if the rent be not paid that then the said A. B.
should enter into the lande, then it appeareth
that his intent was that the rent should cease,
and that A. B. should enter into the land, and
though he may not by those words enter into
the land after the rules of the law, and to haue
freehold, yet these words seeme to be sufficient
to proue that the intent of the feffor was that
he should haue the vse of the lande, for ith he
had the rent to his owne vse, and not to the
vse of the feffor, so it seemeth he shal haue the
vse of the land that is assigned to him for the
paiment of the rent. D. But I am somewhat
in doubt whether he had that rent to his owne
vse: for the intent of the feffor might be that
he should pay the rent for him to some other,
or some other vse might be appointed thereof
by the feffor. S. If such an entent can be pro-
ued, then the intent must be obserued: but we
be in the case to wit, to what vse it shall bee
taken if the entent of the feffor cannot be pro-
ued, and then me thinketh it cannot be other-
wise taken, but that it shalbe to the vse of him
to whom it should be paid: for though it be cal-
led a rent, yet it is no rent in the law, ne in the
law he shal neuer haue remedy for it, though it
were

were assigned to him, and to his heires without condition, neither by distress, by assise, by writ of annuities nor otherwise, but he shalbe driven to sue in the Chancery for his remedie, and then when he sueth in the Chancery he must surmit that he ought to haue it by conscience, and that he can haue no remedy for it in the law. And then, sith he hath no remedie to come to it but by the way of conscience, it seemeth it shalbe taken that when he hath recovered it that he ought to haue in conscience, & that to his owne vse without the contrarie can be proued, and if the contrary can be proued, & that the intent of the feoffour was that he should dispose it for him as he shoulde appoint: then hath he the rent in vse to another vse, & so one vse should be depēding vpon another vse, which is seldom seene, & shal not be intended till it be proued: & so, sith no such matter is here expressed, me thinketh the rent shall be taken to be to the vse of him that it is paid to, and the land in likewise that it is appointed to him for not payment of the said rent, shal be also to his vse, how thinkest thou wil conscience serue therein. D. I think that as thou takest the law, now that conscience (in this case) and the law be al one, for the law searcheth the same thing in this case, to knowe the case that conscience doth, that is to say, the intent of the feoffour, and therefore I woulde moue thee further in one thing. Seru. What is that?

D. That sith the intent of the feoffor shalbe so much regarded in this case: Why it ought not also

The 22. Chapter.

to be as much regarded in the case that is in the last chapter next before this, where the words be conditional, & give the feoffor a title to reentre, for me thinketh that though the feffor may in that case reentre for the condition broken, that yet after his entre he shalbe seised of the land after his entre to the vse of him to whom the land was assigned by the said Indenture for lack of payment of the rent, because the intent of the feoffor shalbe taken to be so in that case as well as in this. And I pray thee let mee knowe thy mind what diuersity thou puttest between the. S. Thou driuest me now to a narrowe diuersitie, but yet I will aunswere thee therein as well as I can. D. But first ere thou shew me that diuersitie: I pray thee shew me howe Uses beganne and why so much lande hath bin put in vse in this Realme as hath bin. S. I will with good will say as me thinketh therein.

¶ Howe Uses of land first began, and by what lawe, and the cause why so much land is put in Vse.

Cap. 22.

Uses were reserved by a secondary conclusion of the lawe of reason in this maner: when the general custome of property, wherby euery man knew his owne good from his neighbors was brought in among the people: It folowed of reason that such lands and goods as a man had, ought not to be taken from him but by his assent

assent or by order of a Law, & then sith it is so
 that euery man that hath landes hath thereby
 ij. things in him, that is to say, the possession of
 the land which after the law of Englande is
 called the franktenement or the freehold, & the
 other is authority to take thereby the profits
 of the land, wherfore it followeth that he that
 hath land & intendeth to giue only the posselli-
 on & freehold thereof to another & to keepe the
 profits to himselfe, ought in reason & consciēce
 to haue the profits seeing there is no law made
 to prohibite, but that in conscience such reser-
 uation may be made. And so when a man ma-
 keth a feoffment to another & intendeth that
 he himselfe shal take the profits then the feoffee
 is said seiled to his vse that so enfeoffed him, &
 is to say, to the vse that he shal haue the possel-
 sion & freehold thereof as in the law to the in-
 tent that the feffor shal take the profits, & vn-
 der this maner as I suppose vses of lande first
 began. D. It seemeth that the reseruing of such
 vse is prohibite by the law, for if a man make
 feoffment & reserue the profits or any parts
 of the profit, as the grasse, wood or such other,
 that reseruatiō is void in the law: & me thin-
 keth it is all one to say, that the law iudgeth
 such a thing if it be done to be void, & that the
 law prohibiteth that the thing shal not be dōe.
 S. Trough it is that such reseruatiō is void
 in the law as thou saist, & that is by reason of
 a Maxime in þ law that willetþ þ such reser-
 uatiō of part of the same thing shalbe iudged
 void in the law, but yet the law doth not pro-
 hibite that no such reseruatiō shal be made,

¶ 1.

but

The 22. Chapter.

but if it be made it indgeth of what effect it shal be, that is to say, that it shalbe void, and so he that maketh such reservation offendeth no law thereby, ne breaketh no law thereby, and therefore þ reservation in conscience is good, but if it were prohibite by statute that no man should make such reservation, ne þ no feffement of trust should be made, but þ all the feffements should be to the vse of him to whom possession of the land is given then the reservation of such vses against the statute should be void because it were against þ law, & yet such a statute should not be a statute against reason, because such vses were first grounded and reserved by the law of reason, but it should prevent the law of reason & should put away the consideration wherupon the law of reason was grounded before the statute made. And then to þ other question, that is to say, why so much land hath bin put in vse, it wil be somewhat long & parauenture to some tedious to shew al the causes particularly, but the very cause why the vse remained to the fesse notwithstanding his own feffement or fine & sometime notwithstanding a recovery against him, is al vpon one consideration after the cause & entent of the gift, fine or recovery, as is aforesaid. Do. Though reason may serue that vpon a feffement a vse may be reserved to the feoffor by the intent of the feoffor against the forme of his gift as thou hast sayd before, yet I marvel how much an vse may be reserved against a fine that is one of þ highest Records that is in the law, & is taken in the lawe of so high effect that it should make an
end

end of all strifes, or against a recovery that is
 ordeined in the law for them that be wronged
 to recouer their right by, and me thinketh that
 great inconuenience and hurt may folloꝝ whe
 such Records may so lightly be auoided by a
 secrete intent or vse of the parties & by a nude
 and bare Querrment & matter in deed, and spe-
 cially sith such a matter in deed may be alleaged
 that is not true whereby may rise great strife
 betweene the parties, & great confusion & un-
 certaine in the law: but neuerthelesse sith our
 intent is not at this time to treate of the mat-
 ter, I pray thee touch shortly some of the cau-
 ses why there hath bin so many persons put in
 estate of lands to the vse of other, as there hath
 bin, for as I heare say few men be sole seised
 of their owne land. **St.** There hath bin many
 causes thereof, of the which some be put away
 by diuers Statuts, & some remain yet, wherefore
 thou shalt vnderstand that some haue put their
 land in feoffement secretly to the intent y they
 that haue right to the land should not knowe
 against whom to bring their action, & that is
 much what remedied by diuers Statutes that
 giue actions against Darnours and takers of
 the profits. And sometime such feoffements of
 trust haue bin made to haue maintenance & bea-
 ring of their feoffees, which parauenture were
 great Lordes or rulers in the Countrey, and
 therefore to put away such maintenance, tre-
 ble damages be giuen by statute against them
 that make such feoffements for maintenance.
 And sometime they were made to the vse of
 Mortmaine which might then be made with-
 out

out forsaithure though it were prohibite that þ freehold might not be gine in Mortmain. But that is put away by the statute of R. the 2. And sometime they were made to defraud þ Lords of wards, relieves, harriots, & of the landes of their villeines, but those points be put away by diuers statutes made in the time of king H. the 7. Somtime they were made to auoid executions vpon statute Staple, statute Marchant & Recognisance, & remedy is prouided for that, that a man shall haue execution of all such lands as any persō is seiled of to þ vse of him that is so bound at the time of execution sued in the 19. yere of H. 7. And yet remain feoffements, fines, and recoueries in vse for many other causes, in maner as many as there did befoze the said estatute. And one cause why they be yet thus vsed is to put away tenancy by the curtesie and titles of Dowder. Another cause is for that lands in vse shal not be put in execution vpon a statute Staple, statut Marchant, nor Recognisance, but such as be in the hands of the Recognisor at the time of the execution sued. And sometime lands be put in vse that they should not be put in execution vpon a writ of Execendi facias ad valentiam. And sometime such vses be made that hee to whose vse &c. may declare his wil thereon, & sometime for suerty of diuers couenants in Indentures of mariage, & other bargains, & these ij. last articles be the chief & principal cause why so much land is put in vse. Also lāds in vse be no Affets neither in a Formdon, nor in an action of Dette against the heire: ne they shal not be put in execution

ecution by an Elegit sued vpon a recovery as
some men say, & these be the very chiefe causes
as I now remember why so much land stan=
deth in vse as there doth, & all the said vses be ..
reserued by the intent of the parties vnderstand
or agreed betweene them, & that many times
directly against the words of feoffment, fine
or recovery, & that is done by the law of rea=
son as is aforesaid. D. May not a vse be assign=
ned to a stranger as well as to be reserued to
the feoffour if the feoffour so appointed it vpon
his feoffment? St. Yes as well, and in like=
wise to the lessee, & that vpon a free gift with=
out any bargain or recompence if the feoffor so
will. D. What if no feoffment be made but that
a man grant to his lessee that from thenceforth
he shal stand seised to his own vse, is not that
vse changed though there be no recompence.
St. I think yes, for there was an vse in Ceste
before the gift which he may as lawfully giue
away as he might his land if he had it in posses=
sion. D. And what if a man being seised of land in
fee, grant to another of his meere motion with=
out bargain or recompence that he from thence=
forth shal be seised to the vse of the other, is
not that graunt good? S. I suppose that it is
not good, for as I take the law: a man cannot
commence in vse but by livery of seison or vpon
a bargain or some other recompence. D. I
hold me contented with that thou hast saide in
this Chapter for this time, & I pray thee shew
me what diuersitie thou puttest between those
two cases that thou hast before reherfed in the
xx. Chapter and in the xxi. Chapter of this
B. 19. pre=

The 23. Chapter.
present booke. Sm. I will with good will,

¶ The diuersitie betweene two cases hereafter following, whereof one is put in the xx. Chapter, and the other in the xxj. Chapter of this present booke.

Cap. 23.

The first case of the said two cases is this, A man maketh a feoffment by deed indented vpon a cōdition that the lessee shall pay certain rent yerely to a straunger &c. & if he pay it not, that it shall be lawfull to the straunger to enter into the land. In this case I said before in the xx. Chapter that the straunger might not enter because that he was not priuy vnto the condition. But I said that in that case the feoffor might lawfully reentre by y^e first wordes of the Indenture because they imply a cōdition in the law, & that the other wordes (that is to say) that the stranger should enter be void in law & conscience. And therefore I said farther that when the feoffor had reentered that he was seised of the land to his owne vse, & not to the vse of the stranger, though his intent at the making of the feoffment were that the straunger after his entre shoulde haue had the land to his owne vse if he might haue entred by the law. And the cause why I think that the feoffor was seised in that case to his owne vse I shal shew thee afterward. The second case is this, a man maketh a feoffment in fee, and it

is agreed vpon the feoffement, that the feoffee
shal pay a perely rent to a stranger, & if he pay
it not: that then the stranger shall enter into
the land. In this case I said as it appeareth in
the said xxi. Chapter, that if the feoffee payed
not the rent: that the stranger should haue the
vse of the land though he may not by the rules
of the law enter into the land, and the diuersi-
tic betweene the cases me thinketh to be this.
In the first case it appeareth as I haue said be-
fore in the said xx. Chapter, that the feoffour
might lawfully reenter by the law for not pat-
ment of rent, & then when he entred according,
he by that entre auoided the first livery of sei-
sin in so much that after the reentre he was
seised of the lande of like estate as hee was
before the feoffement. And so remaineth no-
thing, whereupon the stranger might ground
his vse, but onely the bare graunt or entent of
the feoffor when he gaue the land to the feoffee
vpon condition that he should pay the rent to
the stranger, and if not, that it shoulde bee
lawfull to the stranger to enter, for the fesse-
ment is auoided by the reentre of the feoffor as
I haue said before, and as I said in the last
Chapter, as I suppose a nude or bare graunt
of him that is seised of land is not sufficient to
beginne an Use vpon. D. A bare graunt may
chaunge an vse as thou thy selfe agreed in the
last Chapter, why then may not an vse as
well begin vpon a bare graunt? S. When an vse
is in Use he that hath the vse may of his mere
motion giue it away if he wil without recom-
pence as he might y land if he had it in possessio.

Nij.

but

The 23. Chapter.

but I take it for a ground that he cannot so begin an vse without a livery of seisin or upon a recompence or bargaine, & that there is such a ground in the lawe y^t it may not so begin it appereth thus, It hath bin alway holde for law, that if a man make a deed of feffement to another & deliuer the deed to him as his deed, that in that case he to whom the deede is deliuered hath no title ne medling with the land afore livery of seison be made to him, but only that he may enter & occupy the land at the will of the feffor, & there is no booke saith that the feoffor in that case is seised thereof before livery to y^e vse of the feffee. And in likewise if a man make a deed of feffement of ij. acres of land that lie in ij. shires, intending to giue them to the feoffee & maketh livery of seisin in the one shire, & not in the other, in this case it is commonly holde in books that the deed is void to the acre where no livery is made, except it lie within y^e view, saue only that he may enter & occupy at wil, as is aforesaid: & there is not booke that saith that the feffee should haue the vse of the other acre, for if an vse passed thereby, then were not the deed void vnto al intents, & yet it appeareth by the wordes of the deed that the feoffor gaue the lands to the feffee, but for lack of livery of seisin y^e gift was void, & so me thinketh it is here wout livery of seisin be made accozding. But in the second case of the said ij. cases the feffee may not reenter for non paiment of the rent, and so the first livery of seisin continueth & standeth in effect, and thereupon the first vse may well begin and take effect in the stranger of the land

When

When the rent is not paid vnto him according to the first agreement. And so me thinketh that in the first case the vse is determined because the liuery of seisin wherupon it comenced is determined, & that in the second case the vse of the land taketh effect in the straunger for not-paiment of y^e rent by the grant made at the first liuery which yet continueth in his effect, & this me thinketh is the diuersity betwene the cases. Do. Yet notwithstanding the reason that thou hast made, me thinke that if a man seised of lands maketh a gift thereof by a nude promise without any liuery of seisin or recompence to him made, and graunt that he shall be seised to his vse, that though the promise be void in the law, that yet neuerthelesse it must hold and stand good in conscience and by the law of reason, for one rule of the law of reason is, that we may do nothing against the trouth, & sith the trouth is that the owner of the ground hath graunted that he shal be seised to the vse of the other, that graunt must needs stand in effect or els there is no trouth in the grauntoz. S. It is not against the trouth of the grauntoz in this case though by the graunt he be not seised to the vse of the other, but it proueth that he hath graunted, that the law will not warrant him to graunt, wherefore his graunt is void. But if the grauntoz had gone farther and said that he would also suffer the other to take the profits of the lands without let or other interruption, or that he would make him estate in the land when he should be required, then I think in those cases he were bound in conscience by

The 24. Chapter.

by that rule of the law of reason that thou hast remembred to perfozme them, if he intend to be bounden by his promise, for els he should go against his own trowth & against his own promise. But yet it shal make no vse in that case, nor he to whom the promise is made shal haue no action in y^e law vpon that promise although it be not perfozmed, for it is called in the law a **Nude** or naked promise. And thus me thinketh, that in the first case of the said two cases the grant is now auoided in the law by the re-entre of the feoffor, and that the feoffor is not bounden by his grant neither in law nor conscience, but in the second case he is bound, so that the vse passeth from him as I haue said before. D. I hold me content with thy conceit for this time, but I pray thee shew me somewhat more at large what is taken for a **Nude** contract or a naked promise in the lawes of England and where an action may lye thereupon & where not. S. I will with good will say as me thinketh therein.

¶ **What is a Nude contract or naked promise after the lawes of England, and whether any action may lye thereupon.**

Cap. 24.

First it is to be vnderstood that contracts be grounded vpon a custome of the realme & by the law that is called *Ius gentium*, and not directly by the law of reason, for when al things were in common, it needed not to haue contracts,

tracts, but after property was brought in, they were right expedient to all people, so that a man might haue of his neighbor that he had not of his owne, and that coulde not be lawfully but by his gift, by way of lending, concord, or by some lease, bargain or sale, & such bargaines and sales be called contractes, and be made by assent of the parties vpon agreement betweene them of goods or lands for money or for other recompence, but of money vsuel, for money vsuel is no contract. Also a concord is properly vpon an agreement between the parties with diuers articles there, some rising on the one part & some on the other, As if John at Stile letteth a chamber to Henry Hart, & it is farther agreed betweene them that the said Henry H. shal go to boorde with the said John at Stile, and the said Henry Hart to pay for the chamber and boarding a certaine summe &c. this is properly called a Concord, but it is also a contract & a good action lieth vpon it, howbeit it is not much argued in the lawes of England what diuersitie is betweene a contract, a concord, a promise, a gift, a lone, or a pledge, a bargain, a couenāt, or such other, If for the intēt of the law is to haue the effect of the matter argued and not the termes, and a Nude contract is where a man maketh a bargaine, or a sale of his goods or landes without anie recompence appointed for it. As if I say to another, I sel thee all my land, or all my goods and nothing is assigned that the other shall giue or pay for it, that is a Nude contract, and as I take it, it is boide in the law and conscience, and a Nude
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The 24. Chapter.

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 or naked promise is where a man promiseth another to giue him certain money such a day or to build an house, or to do him such certain seruice, & nothing is assigned for the money for the building, nor for the seruice: these be called naked promises, because there is nothing assigned why they should be made, & I think no action lieth in those cases though they be not performed. Also if I promise to another to keepe him such certaine goods safely to such a time, & after I refuse to take them, there lieth no action against me for it, but if I take them & after they be lost or epaired through my negligēt keeping, there an action lyeth. D. But what opinion holde they that be learned in y^e lawe of England in such promises that be called naked or nude promises, whether do they hold y^e they that make the promise be bounden in consciēce to performe their promise though they cannot be compelled therto by the lawe no no? S. The bookes of the Lawe of Engiande entreate litle thereof, for it is left to the determination of Doctors, & therefore I pray thee shew me somewhat now of thy mind therein, & then I shall shew thee therein somewhat of the minds of diuers that be learned in the lawe of the realme. D. To declare that matter plainly after y^e saying of Doctors, it would aske a long time and therefore I wil touch it brievely to giue thee occasion to desire to heare moze therin hereafter. First thou shalt vnderstand that there is a promise that is called an Aduow, & that is a promise made to God & he that doth make such a vow vpon a deliberate mind intending to per-
 forme

for me it is bound in conscience to do it though
 it be only made in the hart without pronoun-
 cing of words, and of other promises made to
 man vpon a certain consideration if the promise
 be not against y^e law. As if A. promise to giue
 B. xx. li. because he hath made him such a house
 or hath let him such a thing or such other like,
 I think him bound to keepe his promise. But
 if his promise be so naked that there is no ma-
 ner of consideration why it should be made the
 I think him not bound to performe it, for it is
 to suppose that there was some Error in the
 making of the promise, but if such a promise be
 made to an vniuersitie, to a citie, to the church,
 to the clergy, or to poore men of such a place, &
 to the honoz of God or such other cause like,
 as for maintenance of learning, of the common
 wealth, of the seruice of God, or in reliefe of
 pouertie or such other, then I think that he is
 bound in conscience to performe it though there
 be no consideration of worldly profit that the
 grantor hath had or intendeth to haue for it: &
 in all such promises it must be vnderstood that
 that he that made the promise intended to bee
 bound by his promise, for els commonly after
 al Doctors he is not bounde, vnlesse he were
 bound to it before his promise, As if a mā pro-
 mise to giue his father a goosene that hath need
 of it, to keepe him from cold, and yet thinketh
 not to giue it him, neuerthelesse he is bound to
 giue it for he was bound thereto before. And
 after some Doctors a man may be excused of
 such a promise in conscience by casualtie that
 commeth after the promise if it be so that if he
 had

The 24. Chapter.

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had knowen of the casualty at the making of the promise he woulde not haue made it. And also such promises if they shall bind they must be honest, lawfull, and possible, and els they are not to be holden in conscience though there be a cause &c. And if the promise be good & with a cause though no worldly profit shall growe thereby to him that maketh the promise, but onely a spiritual profit as in the case before rehearsed of a promise made to an vniuersitie, to a Citie, to the Church, or such other & with a cause as to the honor of God, there is most commonly holden that an action vpon those promises lieth in the law Cannon. S. whether doest thou meane in such promises made to an vniuersitie, to a citie, or to such other as thou hast rehearsed before and with a cause, as to the honor of God or such other, That the partie shalbe bound by his promise if he intended not to be bounden therby ye or nay? D. I think nay, no more then vpon promises made vnto common persons. Stu. And then me thinketh clerely that no action can lie against him vpon such promises, for it is secrete in his own conscience whether he intended for to be bound or nay. And of the intent inward in the hart, mas law cannot iudge, and that is one of the causes why the law of God is necessarie (that is to say) to iudge inward thinges, and if an action should lie in y case in the law Canon, the should the law Cannon iudge vpon y inward intet of the heart, which cannot be as me semeth. And therefore after diuers y be learned in the laws of the realme all promises shalbe taken in this maner

maner, that is to say, If he to whom the promise is made, haue a charge by reason of the promise which hath also performed: then in case he shall haue an action for that thing that was promised though he that made the promise haue no worldly profit by it. As if a man say to another, heale such a poore man of his disease, or make an high way, and I shall giue thee thus much, and if he do it, I think an action lieth at the Common law. And moreover though the thing that he shall do be al spirituall, yet if he performe it I think an action lyeth at the common law. As if a man say to another, fast for me al the next Lent, and I shall giue thee xx. pounds, and he performeth it, I think an action lieth at the common law. And in likewise if a man say to another, marry my daughter and I will giue thee xx. pound. Upon this promise an action lyeth, if he marry his daughter and in this case he cannot discharge the promise though he thought not to be bound thereby, for it is a good contract, and he may haue *Quid pro quo*, that is to say, the preferment of his daughter for his money. But in those promises made to an *Vniuersitie* or such other as thou hast remembred before, with such causes as thou hast shewed, that is to say, to the honour of God, or to the increase of learning, or such other like where the partie to whome the promise was made is bounde to no new charge by reason of the promise made to him but as hee was bounde to befoze, there they thinke that no action lyeth against him though hee performe not his

The 24. Chapter.

his promise, for it is no contract, & so his own conscience must be his iudge whether he intended to be bound by this promise or not. And if he intended it not: then he offended for his dissimulation only, but if he intended to be bound, then if he performe it not, vntrouth is in him, & he proueth himselfe to be a lier, which is prohibited as wel by the law of god as by the law of reason, And furthermore many y^e be learned in the law of England holde that a man is as much bounden in conscience by a promise made to a common person if he intended to be bound by his promise as he is in the other cases that thou hast remembred of a promise made to the Church, or the Clergy, or such other, for they say that as much vntrouth is in the breaking of the one as of the other, & they say that the vntrouth is more to be pondred then the person to whom y^e promises be made. D. But what hold they if the promise be made for a thing past, as I promise the xl. li. for that thou hast builded me such a house, lyeth an action there? S. They suppose nay, but he shalbe bound in conscience to performe it after his intēt as is befoze said. D. And if a man promise to giue another xl. li. in recompence for such a trespass that he hath done him, lieth an actiō there? S. I suppose nay, & y^e cause is for that such promises be no perfect contracts: for a contract is properly where a man for his mony shail haue by assent of the other party certain goods or some other profit at the time of y^e contract or after, but if y^e thing be promised for a cause that is past by way of a recompence then it is rather an accord then a con-

contract, but then the lawe is, that vpon such accord the thing that is promised in recompence must be paid, or deliuered in hand, for vpon an accord there lieth no action. D. But in the case of trespassse whether hold they that he be bound by his promise though he intended not to be bound thereby. S. They think nay, no more then in the other cases that be put before. D. In the other cases he was not bound to that he promised but only by his promise, but in this case of trespass, he was bound in conscience before the promise to make recompence for the trespass, and therefore it seemeth that he is bounde in conscience to keepe his promise though he intended not to be bound thereby.

S. Though he were bound before the promise to make recompence for his trespass, yet he was not bound to no summe in certein but by his promise, and because that the summe may be too much, or too little, and not egall to the trespass, and that the partie to whom the trespass was done notwithstanding the promise is at libertie to take his action of Trespass if he will, therefore they holde that he may be his owne Judge in conscience whether he intended to be bounde by his promise or not, as he may in other cases, but if it were of a debt, then they hold that he is bound to performe his promise in conscience. D. What if in the case of Trespassse he affirmeth his promise with an Othe? S. Then they hold that he is bound to performe it for sauing of his Othe though he intended not to be bound, but if he intended to be bound by his promise, then they say that

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an othe needeth not, but to enforce the promise,
for they say he breaketh the Lawe of reason,
which is that we may do nothing against the
truth, as wel whē he breaketh his promise that
he thought in his owne hart to be bond by, as
he doth when he breaketh his othe, though the
offence be not so great by reason of the periur-
ie. Moreover to that thou saiest that vpon
such promises as thou hast rehearsed befoze,
shal lye an action after the lawe & Cannon, verely
as to that in this realme there can no action lie
thereon in the spiritual court, if the promise be
of a temporal thing: for a prohibition, or a Prae-
munire facias should lie in that case. D. That is
maruaile sith there can no action lie thereon in
the kings court, as thou saist thy self. S. That
maketh no matter, for though there lye no ac-
tion in the kings Court, against executors vpon
a simple contract, yet if they be sued in that
case for the debt in the Spiritual court, a pro-
hibition lieth. And in likewise if a man swage
his lawe vntreuely in an action of debt vpon a
contract in the kings Court, yet he shall not
be sued for the periury in the Spiritual court,
and yet no remedy lyeth for the periury in the
kings Court, for the prohibition lyeth not
onely where a man is sued in the Spirituall
Court of such things, as the partie may haue
his remedy in the kings court, but also where
the Spiritual court holdeth plee in such case,
where they by the kings prerogative, and by
the auncient custome of the realme ought none
to holde. D. I will take aduilement vpon
that thou hast said in this matter till another
time,

time, and I pray thee now proceede to another question.

¶ The xx. question of the Student.

Cap. 25.

A man hath two sonnes, one borne before espousels, and the other after espousels, and the father by his wil bequetheth to his sonne & heire all his goods, which of these two sonnes shal haue the goods in conscience? D. As I said in our first dialogue in latin, the last Chap. the doubt of this case dependeth not in the knowing what conscience will in this case, but rather the knowing which of the sonnes shalbe iudged heire (that is to say) whether he shalbe taken for heire that is heire by the spiritual lawe, or hee that is heire by the lawe of the Realme, or els that it shall be iudged for him that the father tooke for heire? S. As to that point, admit the fathers minde not to bee knowne, or els that his mind was y he should be taken for heir, that should be iudged for heir by the lawe, that in this case it ought to bee iudged by. And then I pray thee shew me thy minde therein, for though the question be not directly depending vpon the point to see what conscience will in this case, yet it is right expedient for the well ording of conscience that it be knowne after what lawe it shalbe iudged, for if it ought to be iudged after the temporall lawe who should be heir, the it were against conscience, if the iudges in y spirituall lawe should

D. ij.

Judge

Judge him for heire that is heire by the spiritual law, and I thinke they should be bounde to restitution thereby, and therefore I pray thee shew me thine opinion, after what law it shall be iudged. D. He thinketh that in this case it shall be iudged after the law of the church, for it appeareth that the bequest is of goods, and therefore if any suit shall be taken upon the execution of the will for the bequest, it must be taken in the Spirituall Court, and when it is depending in the spiritual Court, we thinke it must be iudged after the spiritual law, for of the Temporal law they have no knowledge, nor they are not bound to know it as we thinketh, and more stronger not to Judge after it. But if the bequest had bin of a chattell real, as of a lease for terme of yeres, or of a ward, or such other, then the matter shoulde have come in debate in the Kinges Court, and then I thinke the iudges there should Judge after the law of the Realme, and that is, that the yonger brother is heire: and so we thinketh the diversitie of the Courts shal make the diversitie of iudgment. S. Of that might followe a great inconuenience as we semeth, for it might be such a case that both chattels real, and chattels personal were in the will, & then after thine opinion, the one sonne should have the chattels personall, and the other sonne the chattels real, & it cannot be conveniently taken as we thinketh, but that the fathers will was that the one sonne should have all, and not be denied. Therefore we thinketh that he shall be iudged for heire that is heire by the common law.

And

And that the iudges spirituall in this case be bound to take notice what the commo law is, for with the things that be in variance be temporal, that is to say, the goods of the father, it is reason that the right of them in this realme shall be determined by the law of the Realme. D. How may that be? for the Judges spiritual know not the law of the Realme, ne they cannot know it as to the most part of it, for much part of the law is in such speech that few men haue knowledg of it, and there is no means ne familiaritie of study between them that learne the said lawes, for they be learned in seuerall places and after diuers waies, and after diuers manners of teachings; & in diuers speeches and commonly the one of them haue none of the booke of the other, and to bind the spirituall Judges to giue Judgment after the law that they know not, ne that they cannot come to the knowledg of it, semeth not reasonable. S. They must do therein as the kings Judges must do when any matter cometh before them that ought to be Judged after the spirituall lawe, whereof I put diuers cases in our first Dialogue in English the viij. Chapter, that is to say, they must eyther take knowledg of it by their owne studie, or els they must enquire of them that be learned in the law of the church, what the law is, and in likewise must they do. But it is to doubt that some of them woulde be loth to aske any such question in such case or to confesse that they are bound to giue their iudgement after the temporal law, and surely they may lightly offend their conscience.

D.ij.

D.

The 25. Chapter.

D. I suppose that some be of opinion that they are not bound to know the law of the realme, & verely to my remembrance I have not heard that Judges of the spiritual law are bound to know the law of the Realme.

S. And I suppose that they are not onely bound to know the law of the Realme, or to do that in them is to know it, when the knowledge of it openeth the right of the matter that dependeth before them, but that they bee also bounde to know where and in what case they ought to Judge after it, for in such cases they must take the kings lawe as the law spiritual to that point, and are bound in conscience to folloewe it as it may appeare by diuers cases, whereof one is this. Two Iointenants be of goods, and the one of them by his last will bequeetheth all his part to a straunger and maketh the other iointenant his executor and dyeth, if he to whom the bequest is made, sue the other iointenant, vpon the legacie as executor &c. vpon this matter shewed the iudges of the Spirituall Law are bound to Judge the will to be boide, because it is boide by the Law of the realme, whereby the iointenant hath right to the whole goods by the title of the Survivor, and is Judged to haue the goods as by the first gift which is before the title of the will, and must therefore haue preferment as the eldest title, and if the Judges of the spiritual Court iudge otherwise, they are bound to restitution, and by like reason the Executors of a man that is Outlawed at the time of his death may discharge themselves in the

Spi-

Spiritual court of the performing of legacies because they be chargeable to the king, and yet there is no such law of vtlagarie in the Spirituall law.

D. By occasion of that thou hast said before I would aske of thee this question. If a parson of a Church alien a portion of Dismes according as the Spiritual law had ordeined, is not that alienation sufficiēt though it haue not the solemnities of the temporall Lawes. I am in doubt therein if the portion be vnder the fourth part of the value of the Church, but if it be to the value of the iiii. part of the Church or aboue, it is not sufficient, and therefore was the writ of right of dismes ordeined, and if in a writ of right of Dismes it be iudged in the kings court for the patrō of the successor of him that alieneth, because the alienation was not made according to the common law, then the iudges of the spirituall lawe are bound to giue their iudgment according to the iudgement giuen in the kings Court. And in likewise if a parson of a Church agree to take a pension for the tithe of a Milke, if the pension bee to the fourth part of the value of the Church or aboue, then it must be aliened after the solemnities of the kings lawes, as lands and tenements must, or els the patron of the successor of him that alieneth may bring a writ of right of dismes and recover in the kinges court, & then the Iudges of the spiritual court are bound to giue iudgment in the Spirituall Courtes accordingly, as is aforesaid. D. I haue hard say that a writ of right of dismes is

D. iiii.

giuen

The 25. Chapter.

given by the statute of VVest. 2. and that spea-
 keth onely of dismes & not of pension. S. Where
 a Parson of a Church is wrongfully deforced
 of his dismes and is let by an Indicavit to aske
 his Dismes in the Spiritual court, then this
 patron may have a writ of Right of Dismes
 by the statute that thou speakest of, for there
 lay none at the common Lawe, for the Par-
 son had there good right though he were let by
 the Indicavit to sue for his right. But when the
 Person had no remedy at the Spirituall lawe,
 there a writ of Right of Dismes lay for the
 Patron by the common lawe, as wel of pensions
 as of Dismes, and some say that in such case it
 lay of lesse then of the fourth part by the com-
 mon lawe, but that I passe over. And the rea-
 son why it lay at the common lawe if the Dis-
 mes or pensions were above the fourth part
 &c. was this: by the spiritual lawe the aliena-
 tion of the Parson with assent of the Bishop
 and of the Chapter shal barre the successour
 without assent of the patron, and so the patron
 might leese his patronage and he not assenting
 thereto: for his encumbent might have no re-
 medy but in the spirituell court, and there hee
 was barred, wherefore the patron in that case
 shal haue his remedy by the comon lawe where
 the assent of the Ordinary and Chapter with-
 out the Patron shall not serue as it is said be-
 fore. But where the encumbent had good right
 by the Spirituall lawe, there lay no reme-
 dy for the patron by the common lawe though
 the indumbent were let by an Indicavit, and for
 that cause was the said Statute made, and it
 lieth

lieth aswel by the equitie for offrings and pensions as for Dismes. Then further I woulde thinke that where the Spirituall court may holde plee of a temporall thing that they must Judge after the temporall law, and that ignorance shall not excuse them in that case for by taking of their office they haue bound themselves to haue knowledg of as much as belongeth to their office, as al Judges be, spirituall and temporall. But if it were in Argument in this case whether the eldest sonne might be a Priest because he is a bastard in the temporall law, that should be iudged after the spirituall law, for the matter is spirituall. D. Yet notwithstanding all the reasons that thou hast made, I cannot see howe the Judges of the spiritual law, shalbe compelled to take notice of the temporall law, seeing that the most part of it is in the French tongue, for it were hard that euerie Spirituall Judge should be compelled to learne the tongue. But if the law of the Realme were set in such order that they that intend to study the law Cannon might first haue a sight of the lawe of the Realme, as they haue now of the lawe Ciuil, and that some Bookes and treatises were made of cases of conscience concerning these two lawes as there be now concerning the law Ciuil & the law Canon, I would assent that it were right expedient, and then reason might serue the better that they should be compelled to take notice of the law of the Realme as they be now bound in such countries as the law Ciuil is bled to take notice of that law.

S. He thinketh thine opinion is right good & reasonable, but till such an order be taken they are bound as I suppose to enquire of them that be learned in the comon law what the law is, & so to give their iudgement according, if they wil keepe theselues from offence of conscience, and forasmuch as thou hast well satisfied my mind in all these questions before, I pray thee now that I may somewhat feele thy minde in diuers articles that be witten in diuers books for the ordering of conscience vpon the Lawe Cannon and Civil, for me thinketh that there be diuers conclusions put in diuers bookes as in the summes called Summa Angelica, & Summa Rosella, and diuers other, for the good order of conscience that be against the law of this Realme and rather blinde conscience then to give any light vnto it.

D. I pray thee shew me some of those cases.
S. I wil with good will.

¶ Whether an Abbot may with conscience present to an Aduowson of a Church that belongeth to the house without assent of the Couent.

Cap. 26.

¶ It appeareth in the Chapter. Et agnoscitur de his quæ sunt a prelati, the which Chapter is recited in the summe called Summa Angelica in the title Abbas, the xxij. article, that he may not without any custome or any special priuiledge

ledge to helpe therein. S. Trough it is that there is such a decretale, but they that be learned in the law of England holde the decretale bindeth not in this realme, & this is the cause why they do hold that opinion. By the lawe of the realme the whole disposition of the lāds and goods of the Abbey is the Abbots only for the time that he is Abbot, and not in the couent, for they be but as dead persons in the law, and therefore the Abbot shall sue and be sued onely without the couent, doe homage, fealty, atturue, make leases, and present to aduowsons onely in his owne name, and they say farther that this authoritie cannot be taken from him but by the Law of the Realme, & so they say that the makers of the decretale exceeded their power. Wherefore they say it is not to be holden in conscience, no more then if a decree were made that a lease for terme of yeres or at wil made by the abbot without the couent should be immediatly void, and so they think that the Abbot may in this case present in his own name without offence of conscience, because the said decretale holdeth not in this Realme. D. But many be of opinion that no man hath authority to present in right & conscience to any benefice with cure but the Pope, or that he hath his authority therein deriued fro the Pope, for they say that forasmuch as the Pope is the Vicar generall vnder God, and hath the charge of the soules of all people that be in the flocke of Christs Church, it is reason that if he cannot minister to all, he do that is necessarie to all the people for their
soules

soules health in his owne person that he shall
 assigne deputies for his discharge in that be-
 halfe. And because patrons claime to present
 to Churches in this Realme by their owne
 right without title deriued from the Pope,
 they say that they vsurpe vpon the Popes au-
 thoritie, & therefore they conclud that though
 the Abbot haue title by the lawe of the realme
 to present in this case in his owne name, that
 yet because that title is against the Popes
 prerogative, that that title, ne yet the law of
 the Realme that maintaineth that title, hol-
 deth not in conscience. And they say also that
 it belongeth to the law Cannon to determine
 the right presentment of Benefices, for it is a
 thing spiritual and belongeth to the spirituall
 iurisdiction, as the deprivation from a benefice
 doth, and so they say the said decretall bindeth
 in conscience though in the law of the Realme
 it bindeth not. S. As to the first consideration
 I would right well agree that if the patrons
 of Churches in this Realme claimed to put
 incumbents into such Churches as should fall
 voide of their Patronage without presenting
 them to the Bishop, or if they claimed that the
 Bishop should admit such incumbent as they
 should present without any examination to be
 made of his ability in that behalfe, that that
 claime were against reason and conscience, for
 the cause that thou hast rehearsed: but foras-
 much as the Patrons in this Realme claime
 no more but to present their incumbentes to
 the Bishop, and then the Bishop to examine
 the abilitie of the incumbent, and if he find him
 by

by the Examination not able to haue cure of
 soules, he then to refuse him, & the patron to
 present another that shalbe able, and if he be a-
 ble then the Bishoppe to admit him, institute
 him, & induct him, I thinke that this claime &
 their presentments thereupon stand with good
 reason and conscience. And as to the seconde
 consideration it is holden in the lawes of the
 Realme that the right of presentement to a
 Church, is a tempozal inheritance, & shall dis-
 cend by course of inheritance from heire to heir
 as lands & tenements shal, & shalbe take as an
 assets as lands and tenements be, and for the
 trial of the right of patronages be ordeined in
 the law diuers actions for them that be wrong-
 ed in that behalf, as writs of right of Aduow-
 son, Alsises of Darrein presentment, Quare impedit,
 and diuerse other which alway without time
 of mind haue bin pleded in the kings Courts,
 as things pertainning to his Crowne and roy-
 all dignitie, and therefore they say that in this
 case his lawes ought to be obeyed in law and
 conscience. D. If it come in variance whether
 he that is so presented be able or not able, by
 whom shall the abilitie be tried? S. If the Or-
 dinary be not partie to the action, it shalbe tri-
 ed by the Ordinary, and if he be partie it shall
 be tried by the Metropolitane. D. Then the
 law is more reasonable in that point then I
 thought it had bin, but in the other point I
 will take aduiseement in it till another time, &
 I pray thee shewe me thy minde in this point,
 If an Abbot name his couet with him in his
 presentation, doth that make the presentation
 void

The 26. Chapter.

void in the Lawe, or is the presentation good that notwithstanding :

S. I thinke it is not void therefore, but the naming of them is void and a thing more the needeth, for if the Abbot be disturbed he must bring his action in his own name without the couent. D. Then I perceiue well that it is not prohibited by the lawe of Englande, but that the Abbot may name the couent in his presentation with him, and also take their assent whom he shall present if he will, and then I hold it the surest way, that he so doe, for in so doing he shall not offend neyther in lawe, nor conscience. S. To take the assent of the couent whom he shall present, and to name them also in the presentation knowing that he may doe otherwise, both in lawe and conscience if hee wil, is no offence, but if he take their assent, or name the with him in the presentation, thinking that he is so bound to do in law and conscience, setting a conscience where none is, & regardeth not the law of the Realme, that will discharge his conscience in this behalfe, if hee wil so that he present an able man as he may do without their assent, there is an error, and offence of conscience in the Abbot. And in like wise if the Abbot present in his owne name, and therefore the couent saith that he offendeth conscience, in that he obserueth not the law of the Church, for that he taketh not their assent, then they offend in iudging him to offend, that offendeth not. And therefore the sure way is in this case to iudge both the said laws of such effect as they be, and not to set an offence

offence of conscience by breaking of the said decree, which standeth not in effect in this behalf within this realme.

¶ If a man find beasts in his ground doing hurt whether may he by his owne auctoritie take them & keepe them till he be satisfied for the hurt.

Cap. 27.

This question is made in the Summe called Summa Rosella, in the title of Restitution, (that is to say) Restitutio xij. the ix. Article, & there it is answered that he may not take them for to holde them as a pledge til he be satisfied for the hurt: but that he may take them and keepe them til he know who oweth them, that he may thereby learne against whom to haue his remedy. Is not the law of the realme so in likewise? S. No verely, for by the law of the Realme he that in that case hath the hurt, may take the beasts as a Distresse, and put the in a pounde Duert, so it bee within the same shire, and there let them remaine til the owner wil make him amends for the hurt. D. What callest thou a pound Duert. S. A pound Duert is not onely such a pound as is commonly made in towne and Lordships, for to put in beasts that be distrained, but it is also euery place where they may be in lawfully, not making the owner an offendour for their being there, And that it bee there also, that the owner

The 27. Chapter.

owner may lawfully giue the beasts meat and drinke while they be in pound.

D. And if they die in pound for lacke of meate
.. Whose ieopardie is it? S. If it be such a pound
Quert as I speake of, it is at the perill of him
that oweth the beasts, so that he that had the
hurt shalbe at liberty to take his action for the
trespasse if he will, and if it be not a lawfull
pound, then it is at the peril of him that distrai-
ned, and so it is if he drine them out of the shire
and they die there.

D. I put case that he that oweth the beasts,
offer sufficient amends, and the other wil not
take it, but keepeth the beasts still in ponde,
may not the owner take them out? S. No, for
he may not be his owne Judge. And if he do,
an action lieth against him for breaking of the
pound, but he must sue a Repleuin to haue his
beastes deliuered him out of the ponde, and
therupō it shalbe tried by xij. men whether the
amendes that was offered were sufficient, or
not, and if it be found that the offer was not
sufficient, then he that hath the hurt shal haue
such amendes as the xij. men shal aslesse. D. If
it be founde by the xij. men that the amendes
were sufficient, shall he that refuseth to take
it, haue no punishment for his refusel, and for
keeping of the beasts in pound after that time?
S. I think no, but that he shal yeld damages in
the repleuin, because the issue is tried against
him.

D. I put case that the beasts after the refusal
die in pound for lack of meat, at whose ieoper-
die is it then? S. At the ieopardie of him that
owed

owed the beastes, as it was before, for he is bound at his peril by reason of the wrong that was done at the beginning, to see that they haue meat as long as they shalbe in pound, vntill the kings writ come to deliuer them, & he resisteth it, for after that time it wil be at his leopardie if they die for lacke of meat, & the damages shall be recouered in an action brought vpon the Statute for disobeying the kings writ.

¶ Whether a gift made by one vnder the age of xxv. yeres be good.

Cap. 28.

¶ It appeareth in Summa Angelica in the title donatio prima the vij. article, that a man before the age of xxv. yeres may not giue, without it be with the authoritie of his tutor. Is it not so likewise at the common law? S. The age of infants to giue, or sel their lands and goods in the law of England is at xxi. yere, or above so that after that age the gift is good, & before that age it is not good, by whose assent soeuer it be except it be for his meat, & his drink, or apparell, or that he do it as executor, in performance of the wil of his testator, or in some other like cases that needeth not to be rehearsed here, & that age must be obserued in this realm in law & conscience, & not the said age of xxv. yere. D. I put case it were ordeined by a decree of the Church, that if any man by his will bequeetheth goods to another, & willeth that they

¶ 1.

shalbe

The 28. Chapter.

Shalbe deliuered to him at his ful age, & that in that case xxv. yere shalbe taken for the full age, shal not that decree be obserued & stand good after the law of England? S. I suppose it shall not, for though it belong to the church to haue the probate & the executions of Testaments made of goods & chattels, except it be in certain Lordships & seigniories that haue the by prescription, yet the church may not as it seemeth determine what shalbe the lawfull age for any person to haue the goods, for that belongeth to the king & his laws to determine, & therfore if it were ordeined by a statut of the realme, that he should not in such a case haue the goods till he were of y age of xxv. yeres, that statute were good & to be obserued as wel in y spiritual law as in the law of the realme, & if a statute were good in that case, then a decree made thereof is not to be obserued, for thozding of the age may not be vnder two severall powers, & one property of every good law of man is, that the maker exceed not his authority, and I think that the spiritual Judge in that case ought to iudge the ful age after the law of the Realme, seeing that the matter of the age concerneth temporal goods, and I suppose farther that as the king by authoritie of his Parliament may ordaine that al Wills shalbe void, & that the goods of euerie man shalbe disposed in such maner as by statute should be assigned, that more stronger he may appoint at what age such Wills as he made shalbe performed. D. Thinkest thou then that the king may take away the power of the Ordinary, that he shal not call executors to account,

compt: S. I am somewhat in doubt therein, but
it semeth that if it might be enacted by statute,
that al wils should be voide, as is aforesaid,
that the it might be enacted that no mā should
haue authoritie to call none to accompt vpon
such wils, but such as the statute shal theretū
appoint, for he that may do the more, may doe
y lesse, notwithstanding I will nothing speak
determinately in that point at this time, ne I
meane not that it were good to make a statute
that al Wils should be void, for I think them
right expedient, but mine intent is, to proue
that the common law may ordaine the time of
the ful age aswel in Wils of tempozall things
as otherwise, and also that Wils shalbe made.
And if it may so do, then much stronger it be-
longeth to þ kings laws to interpretate Wils
concerning tempozal things, aswel when they
come in argument before his Judges, as when
they come in argument before spiritual Jud-
ges, and that they ought not to be iudged by se-
ueral lawes (that is to say) by the spiritual
iudges in one maner, & by the kings Judges
in an other maner.

¶ If a man be conuict of heresie before the Or-
dinarie, whether his goods be
forfaited.

Cap. 29.

¶ Appereth in Summa Angelica in the title Do-
natio prima the xij. article, that he that is an
heretike may not make Executors, for in the
law

The 29. Chapter.

law his goods be forfeit, what is the law of the
 realme therein: S. If a mā be conuict of heresies
 and abiure, he hath forfeit no goods, but if he be
 conuict of heresy, & be deliuered to lay mē's hands,
 then hath he forfeit all his goods that he hath
 at that time that he is deliuered to the, though
 he be not put in execution for the heresie, but
 his landes he shall not forfeit except he be dead
 for the heresie, & then he shall forfeit the to the
 lord of the fee, as in case of felony, except they
 be holden of the Ordinary, for then the king
 shall haue the forfeiture, as it appeareth by a
 statute made the second yere of H. 5. Cap. 7.
 D. We thinketh that as it belongeth onely to
 the church to determine heresies, that so it be-
 longeth to the Church to determine what pu-
 nishment he shall haue for his heresie, except
 death, which they may not be iudges in, but if
 the church decre that he shall therefore forfeit
 his goods, we thinketh that they be forfeit by
 that decree: S. Nay herely, for they be tempo-
 rall, and belong to the iudgment of the kinges
 court, and I thinke the Ordinary might haue
 set no fine vpon one impeached of heresie, til it
 was ordeined by the statute of H. 4. that he
 may set a fine in that case if he see cause, & then
 the king shall haue that fine, as in the said sta-
 tute appeareth.

¶ Where diuers patrons of an Aduowson, and the
 church voideth, the patrons vary in their present-
 ments, whether the Bishop shall haue liberty
 to present which of the incumbents
 that he will, or not.

Cap.

Cap. 30.

This question is asked in Summa Rosella, in the title Patronus the ix. article, and there it appeareth by the better opinion that he may present whether clark he wil, howbeit the maker of the said summe, saith by the rigor of the law the Bishop in such case may present a stranger because the patrons agree not, and in the same Chapter Patronus the xv. article, It is said, that he must be preferred that hath the most merites & hath the most part of the patrons. And if the number be egal, that then it is to consider the merites of the patron, and if they be of like merite, then may the Bishop command them to agree & to present againe. And if they cannot yet agree, then the liberty to present is given to the Bishop to take which he wil, & if he may not yet present without great trouble, then shall the Bishop order the church in the best maner he can, & if he cannot order it, then shall he suspend the Church & take away the reliques to the rebukes of the patrons, and if they wil not so be ordered then must he aske help of the temporaltie, And in the xv. article of the said title Patronus, It is asked whether it be expedient in such case that the more part of the patrons agree having respect to all the patrons, or that it suffice to have the more part in comparison of the lesse part, as thus, There be iij. patrons to present one clark: the third presenteth another, and the fourth another, he that is presented by ij. hath not the more part in comparison of al patrons, for they be egal, but he hath the more part having respect to

D. iij.

the

The 30. Chapter.

the other presentments, to this question it is answered that either the presentment is made of the that be of þ collidge, & there is requisite the more part having respect to al the collidge, or els every mā presenteth for himself as commonly to lay men that haue the patronage of their patrimony, & then it suffiseth to haue the more part in respect of þ other parties, both not the law of England agrees to these diuersities: S. No verely. D. What order then shalbe taken in the law of England if þ patrons vary in their presentments: S. After the lawes of England this order shalbe taken, If they be iointenants, or tenants in comon of the patronage, & they vary in presentment, the Ordinary is not bound to admit none of their clerks, neither the more part nor the lesse, & if the vi. monethes passe of they agree, then he may present by þ laps, but he may not present wīn the vi. moneths, for if he do they may agree & bring a Quare imp against him, & remoue his clerk, & so the ordinary shall be a disturbour, & if the patrons haue the patronage by discent as coparceners then is the Ordinary bound to admit the clerk of the eldest sister, for the eldest shal haue the preferment in the law, if she will, & the at the next auoidāce the next sister shal present, and so by turne one sister after another, till all the sisters or their heirs haue presented, & the the eldest sister shal begin againe, & this is called a presenting by turne, & it holdeth alway between coparceners of an aduowson except they agree to present together or that they agree by composition to present in some other maner, & if they do so the agrees

grewment must stande, but this must be alway except, that if at the first avoidance that shal be after the death of the comon ancelter, the king haue the ward of y^e y^ogest daughter, y^e then the king by his prerogative shal haue the presentment. And at the next avoidance the eldest sister & so by turne. But it is to vnderstand that if after the death of the common ancelter the church voideth, & the eldest sister presented together with an other of the sisters, & the other sisters euery one in their owne name or together, that in that case y^e Ordinary is not bound to receiue none of their Clerks but may suffer the church to run into the laps, as it is said before, for he shal not be bound to receiue y^e clerks of the eldest sister, but where she presenteth in her owne name. And in this case where the patrons bary in presentment, the Church is not properly said Litigious, so that the Ordinary should be bound at his peril to direct a writ to inquire de iure patronatus: for that writ lyeth where y^e present by seueral titles, but these patrons present al in one title, & therfore the ordinary may suffer it to passe if he will into the laps, & this maner of presentments must be obserued in this realme in law & conscience.

¶ How long time the patron shall haue to present to a benefice.

Cap. 31.

This question is asked in Summa Angelica in the title *Ius patronatus* the xvi. article, and there it is answered, that if the patron be a lay man that he shal haue iij. monethes, and if he be a Clarke, he shal haue vi. monethes.

¶. iij.

S.

- S. And by the common law he shal haue vi. monethes whether he be a lay man or a clarke, and I see no reason why a clarke should haue more respit then a lay man, but rather the contrary. D. From what time shall the vi. moneths be accompted? S. That is in diuers manners after the maner of the voidance, for if the church boide by death, creation, or cession, the fixe monethes shall be compted from the death of the encumbent, or from the creation, or cession, whereof the patron shall be compelled to take notice at his perill, and if the voidance be by resignation or depziation, then the vi. monethes shal begin whe the patron hath knowledge given him by the Bishop of the resignation or depziation. D. What if he haue knowledge of the resignation or depziation and not by the Bishop, but by some other, shall not the fixe moneths begin then from the time of that knowledge? S. I suppose that it shall not begin till he haue knowledge given him by the Bishop. D. An vnion is also a cause of voidance how shall the vi. monethes be reckoned there? S. There can no vnion be made but the patrons must haue knowledge, and it must be appointed who shall present after that vnion, that is to say, one of them or both, either jointly or by turne one after another as the agreemēt is vpon the vnion, and sith the patron is priuy to the auoidance, and is not ignorant of it, the vi. monethes shall be accompted from the agreemēt. D. I see well by the reason that thou hast made in this Chapter, that ignorance sometime excuseth in the law of Englande, for in
- some

some of the said auoidances it shall excuse the patrons as it appeareth by the reasons aboue, and in some it shal not, wherefore I pray thee shew me somewhat where ignorance excuseth in the lawe of Englande and where not after thine opinion. S. I will with good will hereafter do as thou saiest if thou put mee in remembrance thereof. But I would yet moue thee somewhat further in such questions as I haue moued thee befoze concerning the diuer-
sities between the lawes of England and other lawes: for there be many moe cases therof that as me seemeth haue right great neede for the good order of conscience of many persons to be reformed and to be brought into one opinion both among spiritual and tempozal, as it is in the case where Doctors hold opinion that the statute of lay men that restrain libertie to giue lands to the Church should be void, & they say farther that if it were prohibit by a statut that no gift should be made to forreines, that yet a gift made to the church should be good, for they say that the inferiour may not take away the authoritie of the superiour, & this saying is directly against the statutes wherby it is prohibit that lands should not be giuen into mortmain, & they say also that bequests and gifts to the church must be determined after the law Canon, & not after the lawes & statutes of lay men, and so they regard much to whom the gift is made whether to the church or to make causes, or to common persons, & beare moze fauor in gifts to the Church then to other, and the law of the realme beholdeth the thing that is
giuen

The 32. Chapter

giuen & pretended that if the thing y^e is giuen be
of lāds or goods that the determination thereof
of right belongeth in this realme to the kings
lawes whether it be to spiritual men or tēporal
to the church or to other, & so is great diuision
in this behalfe when one preferreth his opiniō
& another his, & one this iurisdiction, & another
y^e, & y^e as it is to feare more of singularity thē of
charity: wherefore it seemeth that they y^e haue
the greatest charge ouer the people specially to
the health of their soules, are most bound in cō-
science before other to looke to this matter, &
to do that in them is in al charity to haue it re-
formed not beholding the tēporal iurisdiction
nor spiritual iurisdiction but the cōmon wealth
& quietnes of the people: & that vndoubtedly
would shortly folloiw if this diuision were put
away, which I suppose verely wil not be but
that al men in the realme both spiritual & tē-
poral be ordred & ruled by one law as to tēpo-
ral things: notwithstanding forasmuch as y^e pur-
pose of this writing is not to treate of this
matter, therefore I wil no farther speak ther-
of at this time. D. Then I pray thee proceede
to another question as thou saiest thy mind is
to do. S. I wil with good wil.

¶ If a man be excommenged whether he may in
any case be assoiled without making
satisfaction.

Cap. 32.

In the summe called Summa Rosella, in the ti-
tle Absolutio quarta, the seconde article it is
said

said that he that is excommunicate for a wrong if
 he be able to make satisfaction ought not to be
 assolied but he do satisfie, & that they offered that
 do assolie him, but yet neuertheles he is assolied,
 & if he be not able to make amends that he
 must yet be assolied, taking a sufficient gage to
 satisfie if he be able hereafter, or els þ he make
 another to satisfie if he be able. And these say-
 ings in many things hold not in the lawes of
 England. D. I pray thee shew me wherein the
 law of the Realme varieth therefrom. S. If a
 mā be excommunicate in the spiritual court for
 debt, trespass, or such other things as belong to
 the kings crowne, & to his royal dignity, there
 he ought to be assolied without making any
 satisfaction, for the spiritual court exceedeth
 their power in that they held plee in those ca-
 ses, and the party if he wil may therupon haue
 a Præmunire facias, asswel against the party that
 sued him, as against the Judge, & therefore in
 this case they ought in conscience to make ab-
 solutiō without any satisfactiō, for they not o-
 ly offended the party in calling him to answer
 befoze them of such things as belong to þ law
 of the realme, but also the king: for he by reaso-
 of such suites may leese great aduantages by
 the reason of the writs originalis, iudicialis,
 fines, amerciements, and such other things as
 might grow to him if suits had bin take in his
 courts according to his lawes, & according to
 this saying it appeareth in diuers statuts that
 if a man lay violent hands vpon a clerge and
 beate him, that for the beating amendes shall
 be made in the kings court, and for the laying
 of

The 32. Chapter

of violent hands vpon the clarke amends shall be made in the court christian. And therefore if the Judge in the court christian would award the party to yeld damages for the beating, he did against the statute: but admit that a man be excommenaged for a thing that the Spirituall court may award the party to make satisfaction of, as for the not inclosing of the Churchyard, or for not appareling of the Church conveniently, Then I think the party must make restitution or lay a sufficient caution if he be able or he be assoiled, but if the partie offer sufficient amends & haue his absolution, and the Judge wil not make him his letters of absolution, if the excommenagement be of Recorde in the Kings court then the King may write vnto the spiritual Judge, commaunding him that he make the party his letters of absolution vpon pain of a contempt, & if the said excommunication be not of Recorde in the kings Court, then the party may in such case haue his action against the iudge spiritual for that he would not make him his letters of absolution, but if he be not assoiled, or if he be not able to make satisfaction, & therefore the Judge spiritual wil not assoile him, what the kinges lawes may do in this case I am somewhat in doubt, & wil not much speak of it at this time, but as I suppose he may aswel haue his action in that case for the not assoiling him, as where he is assoiled, and that the iudge wil not make him his letters of absolution: and I suppose the same law to be where a man is accursed for a thing that the iudge had no power to accurse him

him in, as for Debt, Trespass, or such other.
D. There he may haue other remedies, as a
Premunire facias, or such other, and therefore I
suppose the other action lieth not for him.

S. The Judge and the partie may be dead, and
then no Premunire lieth, and though they were
a liue and were condemned in Premunire, yet
that should not auoid the excommungement, &
therefore I thinke the action lieth specially, if
he be thereby delated of actions that he might
haue in the kings court, if the said excommunge-
ment had not bin.

¶ Whether a Prelate may refuse
a Legacie.

Cap. 33.

It is moued in the said summe, named Rosella
in the title Alienatio xx. the xi. article, whether
a prelate may refuse a legacy, wherin diuers o-
pinions be recited there, which as me thinketh
haue neede after the lawes of the realme to bee
more plainly declared. D. I pray thee shew me
what the lawe of the Realme will therein.

S. I thinke that euery prelate and soueraigne
that may only sue, & be sued in his owne name,
as Abbottes, Priours, and such other, may
refuse any legacy that is made to the house: for
the legacy is not perfitt till he to whom it is
made assent to take it, for els if he might not re-
fuse it, he might be compelled to haue landes
wherby he might in some case haue great losse,
but

The 33. Chapter.

but then if he intend to refuse, he must as soone
 as his title by the legacy falleth, relinquish to
 take the profits of the thing bequethed, for if
 one take the profits therof, he shal not after re-
 fuse the legacy: but yet his successor may if he
 wil refuse the taking of the profits to save the
 house from yelding damages, or from arrera-
 ges of rents if any such be, & like law is of a re-
 mainder, as is in legacy, for though in y^e case of
 a remainder & also of a devise as most men say,
 the freeholde is cast vpon him by the law whē
 the remainder or devise falleth: yet it is in his
 liberty to refuse the taking of the profits, & to
 refuse the remainder, if he wil as he might do
 of a gift of lands, or goods, for if a gift be made
 to a man that refuseth to take it, the gift is
 void, & if it be made to a man that is absent, the
 gift taketh not effecte in him til he assent: no
 more then if a man disseise one to another mā
 ble, he to whose ble the disseisin is made, hath
 nothing in the land, ne is no disseisor til he a-
 gree. And to such disseisons & gifts, an Abbot
 or Prior may disagree as wel as any other mā,
 but after some men a Bishop, of a devise, or re-
 mainder that is made to the Bishop, and to the
 Deane and Chapter, nor a Dean and a Chap-
 ter of a devise, or remainder made to them, ne
 yet the master of a colledge of such a devise, or
 remainder made to him and to his brethren, may
 not disagree without the Chapter or brethren,
 for the Bishop of such lands as hee hath with
 the Dean and Chapter, ne the Deane nor ma-
 ster of such land as they haue with the Chap-
 ter or Brethren may not answer without the
 the

the chapter & brethren, & therfore some say that if the Deane or master wil refuse, or disclaime in the landes, that they haue by the deuise or remainder, that disclaimer without the chapter or brethren is void. And therfore it is holden in the law, that if a Bishop be vouched to warrant, & the tenant bindeth him to the warranty by reason of a lease made to him by the Bishop, and by the Dean and the chapter, yelding a rent, that in that case the Bishop may not disclaime in the reuerſion without the assent of the Dean & chapter. But yet if a reuerſion were granted to a deane & a chapter, & the deane refuse, the graunt is void, & so it appeareth that a Deane may refuse to take a gift, or grant of lands, or goods, or of a reuerſion made to him, and to the Chapter, and yet he may not disagree to a remainder, or deuise, and the diuerſitie is because the remainder and deuise be caſt vpon him without any assent, whereunto neither the deane nor the chapter by themselves, may in no wise disagree without the assent of the other, but a gift or graunt is not good to them without they both assent, and in such gifts as I suppose an infāt may disagree as wel as one of full age, but if a woman couert disagree to a gift, & the husband agree, that gift is good. D. What if the lands in that case, of a man and his wife be charged with damages, or be charged with more rent then the lande is worth, and the husband die, shall the wife be charged to the damages, or to the rent?

S. I think nay, if the wife refuse the occupation of the ground after her husbands death,
and

The 33. Chapter.

11 and I think þ same law to be if a leas be made
 to the husband and the wife yeilding a greater
 rent then the land is worth, that the wife af-
 ter the husbands death may refuse the lease to
 saue her from the paiment of the rent, & so may
 the successor of an Abbot. D. And if the hus-
 band in that case ouerliue the wife, & the make
 his executors & die, whether may his executors
 in likewise refuse the lease. S. If they haue
 goods sufficient of their testator to pay the rēt,
 I think they may not refuse it, but if they haue
 not goods sufficiēt of their testator to pay the
 rent to the end of the terme, I think if they re-
 linquish the occupation, they may by speciall
 pleding discharge themselues of the rent & the
 lease, & if they do not, they may lightly charge
 theselues of their own goods. And if a lease be
 made for terme of life, the remainder to an Ab-
 bot for terme of life of 30. at S. reseruing a
 greater rent then the land is worth, & after the
 tenant for terme of life dieth, þ Abbot may re-
 fuse the remainder for the cause befoze rehear-
 sed, & in case that the Abbot assent to the re-
 mainder whereby he is charged to the rent du-
 ring the time that he is Abbot, & after he dieth
 or is deposed liuing the said J. at S. in that
 case his successor may discharge himselfe by re-
 fusing the occupation of the land, as is afore-
 said. But I thinke that if such a remainder
 were made to a Deane, and to the Chapter,
 and the Deane agræ without the assent of
 the Chapter, that in that case the Deane and
 the Chapter may afterwarde disagreæ to the
 remaynder, and that the Ate of the Deane
 With

out the assent of the Chapter shall not charge the chapter in that behalf and thus it appeareth though the meaning of the said chapter & article in the said summe be, that a prelate may not disagree vnto a legacy, for hurting of the house, yet he may after the lawes of the realm disagree thereto, where it should hurt his house. And if in a Precipe q. reddar, there be but one tenant, be he spiritual or temporall, & he refuse by way of disclaimer in such case, where he may disclaime by the law, there the land shall best in the Demandant, & if there be ii. tenants then it shal best in his felloso, if he wil take the whole tenancy vpon him, or els it shal best in the Demandant. But if an Abbot or a lay man refuse the taking of the profits, and shew a special cause why it should hurt him if he did assent, & be thereby discharged as is said before: In whom the land shal then best it is more doubt, whereof I wil no farther speak at this time. And thus it appeareth by diuers of the cases that be put in this chapter that he that is ignorant in the lawe of the realme, shal lacke the true iudgement of conscience in many cases. For in many of these cases that may be don therein by the law, must also be obserued in conscience &c.

¶ Whether a gift made vnder a condition be voided if the soueraigne only breake the condition.

Cap. 34.

IN Summa Rosella in the title Alienatio, the xii. article, is asked this question, whither a gift

Q. 1.

made

The 34. Chapter.

made vnder a certaine fourme may be auoided
or reuoked, because the Prelate or Soueraigne
onely did breake the fourme, and it is there an-
swered that it may not, for that the dede of
the Prelate only ought not to hurt the church,
and if those words (vnder a maner) be vnder-
stood of a gift vpon condition as they seeme to
be, then the said solution holdeth not in this
realme neither in law nor conscience. D. What
is then the law of Englands if a man enfeoffe
an Abbot by dede indented vpon condition,
that if the Abbot pay not to the feoffor a cer-
taine summe of money at such a day, that then
it shalbe lawfull to the feffor to reentre, and at
that day the Abbot faileth of his paiment, may
the feoffour lawfully reentre and put out the
Abbot?

S. Yea verely, for he had no right to the lande
but by the gift of the feffour, and his gift was
conditionel, and therfore if the condition be bro-
ken, it is lawfull by the lawe of England for
the feffour to reentre, & to take his land againe
& to hold it as in his first estate, by which reen-
tre after the lawes of the realme, he disproueth
the first livery of seisin, and all the mesne actes
don betweene the first feoffement and the reen-
tre, and it forceth litle in the lawe, in whome
the default be that the condition was not per-
formed, whether in the Abbot or in his couet,
or in bothe, or in any other person what soeuer
he be, except it be in the feoffour himselfe. And
it is great diuersity betweene a clere gift made
to an Abbot without condition, and where it is
made with condition, for when it is made with-

out

out condition the act of the Abbot onely shall not by the common law disherit the house, but it be in verie fewe cases, but yet vpon diuers statutes the sufferance of the Abbot onely may disherit the house, as by his ceasser, or by lea-uying of a crosse vpon a house against the statute therof made, in which case the house thereby shall lese the land, and some say that by the common law vpon his disclaimer in anowry, a Wit of right of Disclaimer lyeth, but if the gift be vpon condition, it standeth neither with law nor conscience, that the Abbot should haue any more perfect or sure estate then was giuen vnto him, and therfore as the said estate was made to the house vpon condition, so that estate may be auoided for not perfourning of the condition, And I thinke verely that this I haue said is to be holden in this Realme, both in the lawe and conscience, and that the decrees of the Church to the contrary, bind not in this case. But if the landes be giuen to an Abbot, and to his couent, to the intent to finde a Lampe, or to giue certaine almes to poore me though the intent be not in those cases fulfilled, yet the feoffour, nor his heire may not reenter, for hee reserued no reentre by expresse wordes, ne in the wordes, when he sayd, to the intent to finde a Lampe, or to geue almes &c. is implied no reentre, ne the feoffour, nor his hetres shall haue no remedy in such cases, vnlesse it bee within the case of the Statute of VVestminster the second that giueth the Cessauic de Cantaria.

D.ij.

¶ whe-

¶ Whether a couenant made vpon a gift to the Church, that it shall not be aliened, be good.

Cap. 35.

In the said summe, called Summa Rosella, the said title Alienation, the xij. article is asked this question, whether a couenant made vpon a gift to the church, that it shall not be aliened be good. And the same question is moued again in the said Summa called Rosella, in the title Cōditio the first article, & in Summa Angelica, in the title Donatio prima, the ij. & liij. articles, and the intent of the question there is whether notwithstanding that the condition be good to some alienations, whether that yet it be good to restrain alienations for the redēption of them y^e be in captivity vnder the infidels, or for the greater aduantage to the house, & though y^e better opinion be there, that the cōdition may not be broken for redemptiō of them that be in captiuitie: yet it is in maner a whole opinion that it may be sold for the greater aduantage to the house, for it is said there that it may not be taken, but that the intent of the giner was so, & therefore they call the condition that prohibiteth it to be sold, *conditio turpis*, that is to say, a vile condition, wherefore they regard it not: but herely as I take it, if a condition may restrain any maner of alienation, then it shal as well restrain Alienations for the two causes befoze rehearsed, as for any other causes, and though me thinketh that y^e condition is good, &
after

after the lawes of the Realme, that vpon gifts to the Church restraineth alienations, yet I shal touche one reason that is made to the contrary, that is this, There is a clere grounde in the law, that if a feoffement be made to a common person in fee vpon condition that the fesse shal not alien to no man, that condition is void, because it is contrary to the estate of a fee simple to bind him that hath the estate that hee should not alien if he list, and some say that an Abbot that hath land to him and to his successors hath as high and as perfite a fee simple as hath a lay man that hath lande to him and to his heires, and therefore they say that it is as well against the law of the Realme to prohibite that the Abbot shal not alien, as it is to prohibite a lay man thereof, and though it bee therein true as they say, as to the highnes of the estate, yet me thinketh there is a great diuerfitie betwene the cases concerning their alienations: for when lands be giuen in fee simple to a common person, the intent of the lawe is that the feoffee shal haue power to alien, and if he do alien, it is not against the intent of the law, ne yet against the intent of the feffor, but when landes be giuen to an Abbot and to his successors, the intent of the law is, and also of the giuer (as it is to presume) that it shoulde remaine in the house for euer, and therefore it is called Mortmain, that is to say, a dead hand, as who saith that it shall abide there alway as a thing dead to the house. And therefore as I suppose the law wil suffer that condition to be good that is made to restraine that such Mort-

The 35. Chapter.

maine should not be aliened and that yet it may
 prohibite the same condition to be made vpon
 a feoffment made in fee simple to a man and to
 his heires: for that is the most high, the most
 free, & the most purest state that is in the law.
 But the lawe suffereth such a condition to bee
 made vpon a gift in taile because the statute
 prohibiteth that no alienation should be made
 therof. And the as y^e lawe suffereth such a con-
 dition vpon a gift in Mortmaine, that is to say,
 that it shall not be aliened, to be good: then it
 Judgeth the condition also according to the
 wordes, that is to say, if the condition bee ge-
 nerall that they shall alien to no man, as this
 case is that it shalbe taken generally according
 to the wordes, and it shal not be taken that the
 intent of the giuer was otherwise then be ex-
 pressed in his gift, though percase if he were
 alive himselfe and the question were asked
 him whether he would be contented it should
 bee aliened for the said two causes or not, hee
 would say ye, but when he is dead no mā hath
 authoritie to interprete his gift otherwise the
 the lawe suffereth; nor otherwise then the
 wordes of the gift be. And if the condition bee
 speciall, that is to say, that the land shall not
 be aliened to such a man or such a man, then the
 Condition shall bee taken according to the
 wordes, and then they may be aliened as for
 that condition to any other but to them to
 whom it is expressely prohibited that the land
 shoulde not be aliened to. And if the landes in
 that case be aliened to one that is not except in
 the condition, then he may alien the land to
 him

him that is first excepted without breaking of the condition, for conditions be taken straitely in the law and without equitie. And thus me thinketh that because the said condition is generall and restraineth all alienations, that it may not be aliened neither by the law of the Realme, ne yet by conscience, no more for the said two causes, then it may for any other cause, and this case must of necessitie be indged after the rules and groundes of the law of the Realme, and after no other lawe as me seemeth.

¶ If the patron present not within vj. monethes, who shall present.

Cap. 36.

¶ In the same summe, called Summa Rosella, in the title Beneficium in principio it is asked, If the patron present not within vi. monethes who shall present, and within what time the presentment must be made. And it is answered there that if the patron present not within vi. monethes, that the Chapter shal haue sixe monethes to present, and if the Chapter present not within vi. monethes, that then the Bishop shal haue other vi. monethes. And if he be negligent, then the Metropolitan shal haue other vi. monethes, and if he present not, the presentment is deuolute to the Patriarke. And if the Metropolitan haue no superiour vnder the Pope, then the presentment is deuolute to the

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Pope.

The 36. Chapter.

Pope. And so as it is said there y^e Archbishop
shal supply the negligence of the Bishop if he
be not exempt, and if he be exempt the present-
ment immediatly shal fall from the Bishop to
the Pope. And as I suppose these diuerſities
hold not in the lawes of the Realme. **D.** Then
I pray thee shew me who shal present by the
lawes of the Realme if the patron do not pre-
sent within vi. monethes? **S.** Then for default
of the patron the Bishop shal present vniſſe
the king be patron, and if the Bishop present
not within sixe monethes then the Metropo-
litane shal present, whether the Bishop be ex-
empt or not. And if the Metropolitane pre-
sent not within the time limited by the lawe,
then there be diuers opinions who shal present,
for some say the Pope shal present, as it is
said befoze, and some say the king shal present.

D. What reason make they that say the king
should present in that case? **S.** This is their
reason, they say that the king is patron para-
mount of all the benefices within the realme.
And they say further that the King and his
progenitours kings of England without time
of minde haue had authoritie to determine the
right of patronages in this Realme in their
owne Courts, and are bound to see their sub-
iects haue right in that behalfe within the re-
alme, and that in that case from him lyeth no
appeale. And then they say, that if the Pope
in this case should present, that then the king
should not onely leſe his Patronage para-
mount, but also that he should not sometime
be able to do right to his subiects.

D.

D. In what case were that? S. It is in this case: The law of the realme is, that if a benefice fall void that the patron shall present within vi. monethes, and if he do not that then the Ordinary shall present, but yet the lawe is farther in that case, that if the Patron present before the Ordinary put in his Clerke, that then the patron of right shall enjoy his presentment, and so it is though the time shoulde fall after to the Metropolitane or to the Pope, & if the presentment shoulde fall to the Pope, then though the Adversor abode still void, so that the patron might of right present, yet the patron shoulde not knowe to whome hee shoulde present, vnlesse he should goe to the Pope, and so he should faile of right within the Realme. And if percase hee went to the Pope and presented an able Clarke vnto him, and yet his Clerke were refused and another put in at the collation of the Pope, or at the presentment of a straunger, yet the Patron could haue no remedie for the wrong within the realme, for the encumbent might abide still out of the Realme. And therefore the lawe will suffer no tittle in this case to fall to the Pope. And they say, that for a like reason it is that the lawe of the Realme will not allow an excommungement that is certified into the kings Court vnder the Popes Bulles, for if the partie offered sufficient amendes, and yet could not obtaine his letters of absolution, the king should not knowe to whom to write for the letters of Absolution, and the partie could not haue right, and that the lawe will in no wise

Wisse suffer. D. The patron in that case may present to the Ordinary as long as the church is void, and if the Ordinarie accept him not, the patron may haue his remedy against him within the Realme. But if the Pope will put in an incumbent before the patron present, it is reason that he haue the presentment as may seemeth before the king. S. When the Ordinarie hath succeeded his time hee hath lost his power as to that presentment, specially if the collation be deuolute to the Pope, And also when the presentment is in the Metropolitane he shall put in the clerke himselfe and not the Ordinary, and so there is no default in the Ordinarie though he present not the clerke of the patron, if his time be past, and so their lyeth no remedy against him for the patron.

7 D. Though the incumbent abide still out of the Realme yet may a Quare impedit lie against him within the Realme, and if the incumbent make default vpon the distresse and appeare not to shew his title: then the patron shal haue a writ to the Bishop according to the statute & so he is not without remedy.

S. But in this case he cannot be summoned, attached, nor distrained, within the Realme.

D. He may be summoned by the Church as the tenant may in a writ of right of Aduowson.

2 S. There the aduowson is in demaund, & here the presentment is onely in debate, and so he cannot bee summoned by the Church here no more then if it were in a writ of Annuittie, and there the common returne is, quod Clericus est & beneficiatus, nō habēs laicū feod' vbi potest summoneri

summoner. And though he might be summoned in the Church, yet he might neither be attached nor distrained there, & so the patron should be without remedie. D. And if he were without remedie, he should yet be in as good case as he should be if the king should present, for if the title should be given to the king, the patron had lost his presentment clerely for the time, though the Church abide still void. For I haue heard say that in such presentmentes no time after the law of the Realme runneth vnto the king. S. That is true, but there the presentment should be takē from him by right and by the lawe, and here it should be taken from him against the lawe, and there as the law could not helpe him, and that the law wil not suffer. D. Yet me thinketh alway that the title of the laps in such case is given by the law of the Church, & not by the tēporal law, & therefore it forceth but litle what the tēporal law wil in it as me semeth. S. In such countries where the Pope hath power to determine the right of tēporal things, I thinke it is as thou saist, but in this realme it is not so, And the right of presentment is a tēporal thing, & a tēporal inheritance, & therfore I think it belongeth to the kings law to determine, & also to make lawes who shall present after vicarages aswell as before, so that the title of examination of abilitie or nonabilitie be not thereby taken from the Ordinary, & in likewise it is of auoidance of benefices, that is to say, then it shalbe Judged by the kings lawes when a benefice shalbe said voide & when not, and

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and not by the law of the Church, as when a parson is made a Bishop or accepteth another benefice without licence, or resigneth, or is depriued, in these cases the common law saith, that the benefice is void, and so they should be, though a law were made by the Church to the contrary, & so if the Pope shoulde haue any title in this case to present, it shoulde be by the law of h^e realm. And I haue not seene ne hard that the law of the realme hath giuen any title to the Pope to determine any tempozal thing that may be lawfully determined by the kings court. D. It seemeth by that reason that thou hast made now, that thou preferrest the kings authoritie in presentments befoze the Popes, and that me thinketh should not stād with the law of God, ſith the Pope is the vicar general vnder God. S. That I haue said proueth not that for the highest preferment in presentments he is to haue authoritie to examine the abilitie of the Parson that is presented, for if the presentee be able, it suffiseth to the discharge of the Ordinarie, by whom soeuer he be presented, and that authoritie is not denped by the law of the Realme to belong alway to the spiritual iurisdiction, but my meaning is, that as to the right of presentments and to determine who ought to present and who not, and at what time, and when the Church shall be iudged to be void, and when not, belong to the king & to his lawes, for els it were a thing inuaine for him to hold plee of Aduowsons, or to determine the right of patronage in his own courts, & not to haue authoritie to determine the

the right thereof, and those claimes semeth not to be against the law of God. And so me seemeth in this case the presentment is given the king. D. And if the king should haue right to present, then might the church happen to continue void for ever, for as we haue said before no time runneth to the king in such presentments. S. If any such case happen if the king present not, the may y^e Ordinary set in a deputy to serue y^e cure as he may do wth he negligence is in other patrons that may present & do not, and also it cannot bee thought that the king which hath the rule & governace ouer the people not onely of their bodies, but also of their soules wil hurt his conscience and suffer a benefice continually to stand without a curat no more then he doth in Adulterers that bee of his owne presentment.

VWhether the presentment and collation of all benefices and dignities, voiding at Rome, belongeth only to the Pope.

Cap. 37.

In the same summe, called Summa Rosella, in the title Beneficium primū, in the xiiij. article, It is said that benefices, dignities, and parsonages, voiding in the court of Rome may not be giue but by the Pope & likewise of the Popes seruants and of other that come and go from the Court, if they dye in places nigh to the Court within two daies iourney, all these belong to the Pope, but if the Pope present not with
in a

The 37. Chapter.

in a moneth: the after the moneth they to whō
it belongeth to present, may present by them-
selues only, or by their vicar general if they be
in farre parties, & these sayings hold not in the
law of the Realme. D. What is the cause that
they hold not in this realme, as wel as in all o-
ther realmes? S. One cause is this. The king in
this realme according to the auncient right of
his crowne, of all his Aduocates that be of
his patronage ower to present. And in like-
wise other patrons of benefices of their pre-
sentment, & the place of the right of presentments
of benefices within this realme, belong to the
king and his crowne. And these titles cannot
be taken from the king and his subiectes, but
by their assent, and the law that is made there-
in to put away the title, bindeth not in this
realme, And ouer that before the statut of 25.
Ed. 3. there was a great inconuenience & mis-
chiefe, by reason of diuers prouisions & reser-
uations that the Pope made to the benefices
in this Realme contrarie to the olde right of
the king and other patrons in this Realme,
as wel to the Archbishopps, Bishopps,
Deanries and Abbeys, as to other dignities &
benefices of the church. And many times ali-
ens thereby had benefices within the Realme
that vnderstood not the English tōgue, so that
they could not counsaile ne comfort the people
when need required, and by that occasion great
riches was conueighed out of the Realme.
Wherfore to auoid such inconueniences, it was
ordained by the said statut that al patrons al-
wel spirituall as tēporal should haue þ present-
ments

ments freely, & in case the collatio or prouision were made by the Pope in disturbance of anie spirituall patron, that then for that time the king should haue the presentment, & if it were in disturbance of any lay patron, that then if the patron presented not within the halfe yere after such voidāce, nor the Bishop of the place within a moneth after the halfe yere: that then the king should haue also the presentment, and that the king should haue the profits of the benefices so occupied by prouision, except abbeies & Priories, & other houses that haue colledge & couent, & there the colledge & couent to haue the profits, and because the statute is generall & excepteth not such benefices as shal boide in the Court of Rome or in such other place as befoze appeareth, therefore they be taken to be within the prouision of the said estatute as well as the benefices that boide within the realme, & all prouisors & executors of the said collations & prouisions & al their attorneis, notaries & maintainers, shal be out of the protection of y^e king, & shal haue like punishmēt as they should haue for executing of benefices voiding within the realme. D. But I cannot see how y^e said statute may stand with conscience, that so farr restraineth the Pope of his libertie, which as me seemeth hee ought in this case of right to haue. S. Because as I suppose that patrons ought of right to haue their presentments, vnder such maner as they claime them in this realme, as I haue said befoze, and as in the xxi. Chapter of this book appeareth moze at large, and also forasmuch as it appeareth euidently
that

that great inconuenience folloved vpon the said prouisions; and that the said estatute was made to auoid the same, which sith that time hath bin suffered by the Pope, and hath bin alway vsed in this Realme without resistance that the said estatute shoulde therefore stande with good conscience.

¶ If a house by chaunce fall vpon a horse that is borrowed, who shall beare the losse.

Cap. 38.

¶ In the said summe called Summa Rosella, in the title Casus fortuitus, in the beginning is put this case, If a man lende to another a horse, which is called there Depositum, and a house by chance falleth vpon the horse, whether in that case he shal aunswere for the horse? And it is answered there, that if the house were like to fall, that then it cannot be taken as a chance, but as the default of him that had the horse deliuered to him. But if the house were stronge, & of likelyhoode and by common presumption in no daunger of falling, but that it fell by sodaine tempest or such other casualtie, that then it shalbe taken as a chaunce, and he that had the keeping of the horse shalbe discharged, & though this diuerstie agreeth with the lawes of the Realme, yet for the moze plainer declaration therof, and for the moze like cases and chances that may happen to goods, that a man hath

in his keeping that be not his owne. I shal add a litle moze therto that shalbe somewhat necessary as me thinketh to the ordering of conscience. First a man may haue of another by way of lone or borowing, money, cozne, swine, and such other things where the same thing cannot be deliuered if it be occupied, but an other thing of like naturz, & like value must be redeliuered for it, & such things he that they be lēt to, may by force of the lone vse as his own. And therefore if they perishe, it is at his ieopardy, & this is most properly called a lone. Also a man may lend to another a horse, an oxe, a cart, or such other things that may be deliuered againe, and they by force of that lone may be vsed & occupied reasonably in such manner as they were borrowed for, or as it was agreed at the time of the lone, that they should be occupied, & if such things be occupied otherwise thē according to thintent of the lone, & in that occupation they perish, in what wise soeuer they perish, so it be not in default of the owner, he that borrowed thē shalbe charged therewith in law & conscience, & if he that borrowed thē occupy them in such maner as they were lent for, & in that occupation they perish in default of him that they were lent to, then he shall aunswere for them. And if they perish not through his default, then he that osweth them shall beare the losse. Also if a man haue goods to keepe to a certaine day, for a certaine recompence for the keeping, he shall stand charged or not charged, after as default or no default shall be in him as before appeareth, and so it is if he haue nothing

The 38. Chapter.

for the keeping, but if he haue for the keeping,
 & make promise at the time of the deliuey to
 redeliuer the safe at his perill, then he shall be
 charged with all chances that may fall. But if
 he make that promise & haue nothing for kee-
 ping: I think he is bound to no such casualties
 but that be wilful & his owne default, for that
 is a nude, or a naked promise, whereupon as I
 suppose no action lieth. Also if a man find goods
 of an other, if they be after hurt or lost by wil-
 ful negligence, he shall be charged to the owner,
 but if they be lost by other casualty, as if they
 be laid in a house that by chance is burned, or if
 he deliuer the to an other to keepe that runneth
 away with the: I think he be discharged, and
 these diuersities hold most commonly vpon pled-
 ges, or where a man hireth goods of his neigh-
 bor to a certaine day for certain mony, & many
 other diuersities be in the law of the Realme,
 what shalbe to the iopardy of the one, & what
 of the other, which I wil not speake of at this
 time, And by this it may appeare that it is co-
 monly holden in the lawes of England if a co-
 mon carier go by the wates that be dangerous
 for robbing, or drine by night, or in other in-
 conuenient time, & be robbed, or if he ouer charge
 a horse, wherby he falleth into the water or o-
 therwise, so that the stuffe is hurt or impeired,
 that he shall stande charged for his misdemea-
 nour, and if he would percase refuse to cary
 it, vnles promise were made vnto him that he
 shall not be charged for no misdemeanoz that
 should be in him, the promise were void. For
 it were against reason & against good maners
 and

and so it is in al other cases like. And al these diuerſities be granted by ſecundary cōcluſions deriued vpon the laſwe of reaſon without any ſtatute made in that behalfe. And parauenture laſwes, and the concluſions therin, be the moze plain & the moze open. For if any ſtatute were made therin, I think berely no doubts, & queſtions would riſe vpon the ſtatute, then doth now when they be only argued & iudged after the common laſw.

¶ If a Priest haue wonne much goods by ſaying of maſſe, whether he may giue thoſe goods or make a will of them,

Cap. 39.

I N the ſaid ſumme called Súma Roſella in the title Clericus quartus the third article, is aſked this queſtion, If a Priest haue wonne much goods by ſaying of maſſe, whether he may giue thoſe goods or make a wil of them: whereto it is aunſwered there, that he may giue them, or make a will of thē, ſpecially when a man bequeth mony for to haue Maſſes ſaid for him: & the like laſw is of ſuch things as a clark winneth by the reaſon of an office, For it is ſayde there, that ſuch things come to him by reaſon of his own perſon, which ſayings I think accord wth the laſw of þ^e realme. But forasmuch as in the ſaid article & in diuers other places of þ^e ſaid chapter, & in diuers other chapters of the ſaid Summe, is put great diuerſity betweene ſuch goods, as a Clarke hath by reaſon of his

R. ij.

church

The 39. Chapter.

church, and such goods as he hath by reason of his persō, & that he must dispose such goods as he hath by reason of his church in such maner as is appointed by the law of the Church, so that he may not dispose them so liberally, as he may the goods that come by reason of his owne person, therefore I shall a little touche what spirituall men may doo with their goods after the law of the Realme.

First a Bishop of such goods as he hath with the Deane and Chapter he may neither make gift nor bequest, but of such goods as he hath of his owne by reason of his church or of the gift of his auncestors or of any other, or of his patrimony, he may both make gifts and bequests lawfully. And an Abbot of the goods of his Church may make a gift, and that gift is good as to the lawe. But what it is in conscience that is after the cause and intent and qualitie of the gift, for if it be so much that it notably hurteth the house or the couent, or if he giue away the booke, or the chalices, or such other things as belong to the seruice of God, he offendeth in conscience, and yet he is not punishable in the law, ne yet by a Sub pena after some men, ne in none otherwise but by the lawe of the Church, as a waster of the goods of his monastery. But neuertheless I will not fully holde that opinion, as to that that belongeth necessarily to the seruice of God, whether any remedy lie against him or not, but remit it to the iudgment of other. And a Deane and Chapter, and a master & brethren of goods that they haue to themselves, & also of goods that they haue with
the

the Chapter & brethren, the same diuersity holdeth as appeareth befoze of a Bishop and the Deane & Chapter, except that in the case of a master & brethren the goods shalbe ordered as shalbe assigned by the foundation. And mozeouer of a Parson of a Church, Vicar and Chauntry priest, or such other, al such goods as they haue aswell such as they haue by reason of the parsonage, vicarage, or chauntry, as that they haue by reason of their owne person they may lawfully giue and bequeth where they will after the commō law, And if they dispose part among the parishioners & part to the building of churches, or giue part to the ordinary, or to poore men, or in such other maner, as it is appointed by the law of the church, they offende not therein, vnles they think themselves bounden therto by dutie, & by authority of the law of the church, not regarding the kings lawes, for if they do so it seemeth they resist the ordinance of God, which hath giue power to princes to make lawes, But there as the Pope hath souereintie in temporall things as he hath in spiritual things, there some say that the goods of priests must in conscience be disposed as is contained in the said summe, but that holdeth not in this Realme, for the goods of spirituall mē be tēporal in what maner soeuer they come to them, & must be ordered after the temporall law as the goods of the temporall men must be. Howbeit if there were a statute made in this case of like effect in many points, as the law of the church is, I thinke it were a right good & a profitable statute.

The 40. Chapter.

¶ VWho shall succede a Clerke that dieth intestate.

Cap. 40.

In the said Summe called Rosella in þ chapter Clericus quartus the vij. article, is asked this question, who shall succede to a Clerke that dyeth Intestate, & it is answered that in goods gotten by reason of the church, the church shall succede. But in other goods his kinsmen shall succed after the order of the law, & if there be no kinsmen, then the church shall succed. And it is said further that goods gotten by a Canon secular by reason of his church or prebend shall not go to his successor in the prebend, but to the Chapter. But where one that is beneficed is not of the congregation, but he hath a benefice clerely seporate, as if he be a person of a parish Church or is a president, or an Archdeacon not beneficed by the Chapter, then the goods gotten by reason of his benefice, shall go to his successor and not to the Chapter, & none of these sayings hold place in the laws of England. Do. What is then the law if a Parson of a Church, or a Vicar in the Countrey die intestate, or if a Cannon secular be also a Parson and haue goods by reason thereof, and also by a Prebende that he hath in a Cathedral Church, & he die intestate, who shall haue his goods? Stu. At the common law the Ordinarie in all these cases may administer the goods and after hee must commit administration to the next faithfull friends of him that is dead intestate

testate that will desire it, as he is bound to do where lay men that haue goods die intestate. And if no man desire to haue administration, then the Ordinary may administer and see the debts payed, and he must beware that he paye the debts after such order as is appointed in the common law, for if he pay debts vpon simple contrates before an obligation he shall be compelled to pay the debt vpon the obligation of his owne goods, if there be not goods sufficient of him that died intestate, & though it bee suffered in such case that the Ordinary may pay pound and pound like, that is to appoition the goods among the debtors after his discretion, yet by the rigor of the Common law, he might be charged to him that can first haue his iudgment against him. And furthermore by that is said afore in the last Chapter it appeareth, that if a Bishop that hath goods of his patrimony, or a master of a Colledge, or a Deane of goods that they haue of their owne onely to themselves, die intestate, that the Ordinary shall commit administration thereof, as before appeareth, and if they make executors then the executors shal haue the ministration thereof, But the heires nor the kinsmen by that reason onely that they be heires or of kin to him that is deceased, shall haue no medling with his goods, except it be by custome of some countreis where þ heirs shal haue their lons, Or where the childzen (the debts and legacies paid) shal haue a reasonable part of the goods after the custome of the countrey.

¶ If

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If a man be outlawed of felony, or be attainted for murder or felony, or that is an ascismus, may be slaine by euerie straunger.

Cap. 41.

It appeareth in the said summe called Summa Angelica in the xxj. Chap. in the title of Ascismus the ij. Paragrase, that he is in an Ascismus that will slay men for mony at the instance of euerie man that will moue him to it, & such a man may lawfully be slaine, not onely by the iudge, but by euerie private person. But it is said there in the iij. Paragrase, that he must first be iudged by the law as an Ascismus ere he may be slaine, or his goods seiled. And it is said further there in the ij. Paragrase, that also in conscience such an Ascismus may be slaine if it be done through a zeale of Justice and els not. Is not the law of the realme likewise of men outlawed, abiured, or iudged for felony?

S. In the law of the realme there is no such law, that a man shalbe adiudged as an Ascismus ne if a man be in full purpose for a certain summe of money that he hath receiued to slay a man, yet it is no felony, ne murder in the law til he hath done the act, for intent in felony nor murder is not punishable by the common law of the Realme, though it be deadly sinne before God, but in treason or in some other particular cases by statute that intent may be punished. And though a man in such case kill a man for money: yet he shall not be attainted that he

he is an **Alcismus**. For as it is said before there is no such terme of **Alcismus** in the law of the realme, but he shal in such case be arraigned vpon the murther. And if he confesse it or pleyed that he is not guilty, & is found guiltie by xij. men, he shall haue iudgement of life, and of mēbre, & shall forsaite his lands and goods. And like law is if in appeal brought of the murther if he stand dumble & will not aunswere to the murther, he shalbe attainted of the murther, & shal forsaite life, lands & goods, but if he be arraigned of the murther vpon an indictment at the kings suit, & thereupon standeth dumb and will not aunswere, there he shal not be attainted of the murther, but he shal haue paine fort and dure (that is to say) he shalbe pressed to death, and he shall there forsaite his goods, and not his lands. But in none of these cases (that is to say) though a man be outlawed for murder or felony, or be abjured, or that he be otherwise attainted: yet it is not lawfull for any man to murther him or slay him, ne to put him in execution but by authoritie of the kinges laws. Insomuch that if a man be adiudged to haue paine fort & dure, & the officer beheadeth him, or on the contrary wise putteth him to paine fort & dure, where he should behead him, he offendeth the law.

And if an officer which hath authoritie to put a man to death, may not put him to death but according to the iudgement, then me thinke it shoulde followe that more stronger a straunger may not put such a man to death of his owne authoritie without commaundement
of

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of the lawe. But if the iudgement be that hee shalbe hanged in chaines, & the officer hangeth him in other things and not in chaines, I suppose he is not giltye of his death, but some say he shall there make a fine to the king because he hath not folloved the words of the iudgement.

Also if a man that is no officer would arrest a man that is outlawed, abiured, or attainted of murder or felony as is aforesaid, & he disobeieth the rest, and by reason of the disobedience he is slaine, I suppose the other shal not be impeached for his death, for it is lawfull vnto euery man to take such persons & to bring them forth that they may be ordered according to the law. But if a Capias be directed vnto the sherife to take a man in an action of debt or trespass, there no man may take the man, but hee haue authoritie from the sherife. And if any man attempt of his own authoritie to take him, & he resisteth & in the resisting is slaine: he that would haue taken him is guilty of his death.

¶ Whether a man shall be bounden by the act or offence of his seruant or officer.

Cap. 42.

In the said summe called Summa Angelica, in the title dominus iiij. Paragrafe, is asked this question, whether a man shall be charged for his household, And it is said there that he shal when the household offendeth in an office or ministry

nistrý that the maister is the chiefe officer of,
 and he hath the worke & the profit of the hou=
 shold. For it shalbe his default that he would
 chole such seruants, for he ought to appoint
 honest persons: but it is said there, that it is
 to be vnderstood ciuily & not criminally, wher=
 by as is said there, he that is a gouernour is
 bound for the offence of his officers, & that the
 same is to be holden of a captain, that he shalbe
 bound for the offence of his squires. And an host
 for his geste and such other. Neuertheles it is
 said there that certaine doctours there reher=
 sed, said thereto that if the office be an open or
 publike office, as an office of power or other
 like, It suffiseth to bring forth him that of=
 fended, But it is otherwise if it be not a pub=
 like office, but an holte or a Tauerne or other
 like. But if the household offend not in the of=
 fice, the Lord is not bound as to the laswe, but
 in Conscience, he is bound if he were in default
 by not correcting them, for he is bound to cor=
 rect them both by worde and example, and if
 he finde any incorrigible he is bound to put him
 asway except that he haue presumptions, that
 if he do so, he wil be the worse, and then he may
 do that he thinketh best, and he is excused and
 els not. For to such persons it is said Error qui
 non resistitur: approbatur (that is to say) an
 Error that is not resisted is approued. And
 though diuers of the sayings befoze rehearsed
 agree with the laswe of the Realme, yet all
 is not so, & also they that do are to be obserued
 by authoritý of the lasw of the realme, & not by
 the authoritý alleaged in the said Paragrafe.
 And

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And therefore I intende to treat somewhat where the master shalbe charged by his seruāt or deputy, or by them that be vnder him in any office, & where not, & then I intend to touche some other things where the maister after the lawes of the realme shalbe charged by the acte of his seruant in other cases not concerning offices, and where not.

First if a man be committed to swarde vpon arrerages of Accompt, & the keeper of the prison suffereth him to go at large, then an action of debt shal lie against him. And if he be not sufficient, then it lieth against him that committed the keeping of the prison vnto him, and that is by reason of the statute of West. the ij. Cap. xj. Also if Bailifes of fraunchises that haue Returne of writs make a false returne, the partie shal haue auerment against it aswell of too litle issues as of other things, aswell as he shal haue against the Sherife, but all the punishment shalbe only vpon the bailife, and not vpon the Lord of the franchise, and that doth appeare by the statute made in the first yere of king Edward the iij. the ~~fourth~~ Chapter. But if an Undersherife make a returne whereupon the Sherife shalbe amerced, there the high Sherife shalbe amerced, for the returne is made expressly in his name. But if it be a false returne whereupon an action of disceit lieth, in that case it may be brought against the Undersherife, And see thereof the statute that is called, *statutum de male returnantibus breuia.*

Also if the kings Butler make deputies, he shal aunswere for his deputies as for himselfe.

As appeareth in the statute made in the xxv. yere of king Edward the third De prodicionibus the xxi. Chapter.

Also in the statute that is called Statutu Scaccarij, it is enacted among other things that no office of the Eschequer shall put any clark vnder him, but such as he wil aunswere for. And forasmuch as the statute is general: it seemeth that he shall answere as wel for an vntruth in any such clark, as for an ouersight.

Also in the xiiij. yere of king Ed. the iij. Cap. 70. it is enacted, that all Gailles shalbe appointed againe to the shires, and that the sherife shall haue the keeping of them, & that the sherif shal make such vndegardeins for the which they will aunswere. And neuertheles I suppose that if there be an escape by default of the gailer, that the king may charge the Gailer if he wil. But it is no doubt but he may charge the sherife by reason of his statute if he will. But if it be a wilfull escape in the Gailer which is felony in him, the sherife shall not be bound to aunswere to the felony, ne none other but the Gailer himselfe, & they that assented to him.

Also if a man haue a Sherifewike, Constableship, or Bailiwike in fee, whereby he hath the keeping of prisoners, if he let any to replevine that be not repleuishable, and thereof be attaint, he shall lese the office &c. And if it be an Undersherife, Constable or Bailife that hath the keeping of the prison, that doth it without knowledge of the Lord, he shal haue imprisonment by thre yeres, and after shall be ransomed at the kings wil, as appeareth in

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the statute of west. the 1. the xv. Chapter. And so it appeareth that in this case, he that is the Lord of the prison is not bound to answer for the offence of them that haue the rule of the prison vnder him, but that they shall haue the punishment themselves for their misdemea-
noz. Also there is a statute made in the xxvii. yere of king Edward the 3. the xix. Chapter that is called the statute of the staple, whereby it is ordeined that no Marchant, ne none other mā shall not leese their goods for the trespass, or forfait of their seruants, vnlesse it be by commaundement of his Master, or that he offende in the office that his maister hath put him in, or els, that the maister shall be bound to an answer for the deede of his seruant by the lawe marchant, as in some place it is vsed.

Also it is enacted in the xliij. yere of King Edward the 3. the viij. Chapter that Wapentakes and Hundzedes, that be seuered from the Counties shall be adioined againe vnto them, and that if the Sherife hold them in his owne hands, that he shall put in them, such bailifes that haue landes sufficient, & those for which he will answer, and that if he let them to ferme, that they be let to the annient ferme, but after it is prohibited by the statute of the xliij. yere of king Henry the vi. the x. Chapter. That no Sherife shall let his Bailiwikes, nor Wapentakes to ferme. And when they be once in the Shirifes owne hands, and the Sherifes put in Bailifes, they be but as Underbailifes to the king and the Sherife the high Bailif, and they in maner the Shirifes seruants and put in
onely

onely by him. And therefore by the said statute of king Edw. the 3. he shall aunswere for them if they offend in their office, but if the Sherife let them to ferme: then though the Sherif offend the statute in that doing: yet whether he shall be charged for their mildemeanor in the office or not, is a great doubt to some men, for they say that this statute is onely to be vnderstode where the bailiwikes be in the Sherifs hands, but here they be not so, ne the Bailifes be not his seruants, but his fermours. And therefore they say, that if the Sherife shalbe charged for them: It is by the common law, & not by the statute aforesaid. Also in the ij. yere of king Henrie the vj. the xiiij. chap. it is enacted, that Officers by patent in euery court of the king, that by vertue of their Office haue power to make clarkes in the said courts shalbe charged, & swozne to make such clerkes vnder the, for whom they wil answere. Also the Hospitallers & Templers be prohibit they shal hold no plee that belong to the kings Courtes, vpon pain to yeld damages to the party griued, & to make raunsome to the king, that the superiours shal answere for their obediencers, as for their owne deed, west. 2. Cap. 43. Also the Seriaunt of the Catery shal satisfie al the debts, damages, and executions that shalbe recouered against any that is purueior, or achator vnder him, that offend against the statute of xxxvi. of Edw. the iij. or against this statute of xxiiij. of Henry the vi. In case the purueior, or achatour be not sufficient &c. And the partye plaintife shal haue a Scirefacias against the said
ser=

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sergeant in this case to have execution, as appeareth in the xxij. yere of king Henry the 6. the 1. Chapter.

Also if a man be sent to prison upon a Statute marchant by the Mayor, before whom the recognisance was taken, & the Gailler wil not receiue him, he shal answere for the debt if he haue wherewith, & if not then he shal answere that comitted the gaile to him, as appeareth in the statute called the statute marchant.

Also if Outragious tolle be taken in the towne Marchant, if it be the kings towne let to farme, the king shal take the franchise of the market into his handes, And if it be done by the Lord of the towne, the king shall doe in likewise, And if it be done by the Bailife, vnknowing the Lord, he shall yeld againe as much as he hath taken, and shall haue imprisonment of xl. daies. And so it appeareth that the Lord in this case shall not answere for his Bailife, west. the 1. Cap. 30. And in all the cases before rehearsed, where the superiour is charged by the default of him that is vnder him, hee in whose default his superiour is so charged, is bounde in conscience to restore him & is so charged through his default. Except the case before rehearsed of the hospitellers, for all that the obediencer hath, is the superiours if he wil take it. And therfore what recompence shalbe made by the obediencer in that case, is al at the wil of the superiour. And nowe I intend to shew thee some particuler cases, where the master after & laws of & realme shalbe charged by the act of his seruant, Bailif, or deputy, and where

where not, and so for to make an ende of this Chapter.

First for trespassse of battery, or wrongfull entre into landes or tenements, ne yet for felony or murther, the master shal not be charged for his seruant, vnlesse he did it by his commandement.

Also if a seruant borrowe money in his masters name, the master shal not be charged with it, vnlesse it come to his vse, and that by his assent, And the same law is if the seruant make a contract in his masters name, the contract shal not bind his master, vnles it were by his masters commandement, or that it came to the masters vse by his assent. But if a man sende his seruant to a faire or market, to buy for him certaine things, though he commande him not to buy them of no man in certaine, and the seruant doth according, the master shal be charged, but if the seruant in that case buy them in his owne name, not speaking of his master, the master shall not be charged, vnles the thinges bought come to his vse.

Also if a man send his seruant to the market with a thing which he knoweth to be defectiue to be sold to a certaine man, and he selleth it to him: there an action lieth against the master, but if the master biddeth him not sel it to any person in certaine, but generally to whom he can, and he selleth it according, there lieth no action of discript against the master.

Also if the seruant keepe the masters fire negligently, wherby his masters house is bren and his neighbours also, there an action lyeth

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against the Master. But if the servant beare fire negligently in the streate, and thereby the house of an other is burned, there lieth no action against the Master.

Also if a man desire to lodge with one, that is no common hosteler, and one that is seruāt to him that he lodgeth with, robbeth his chamber, his Master shall not be charged for that robbing, but if he had bin a common hosteler, he should haue bin charged.

Also if a man be gardein of a prison where in is a man that is condemned in a certayne summe of money, and an other that is in prison for felony, and a seruāt of the gardeine that hath the rule of the prison vnder him, wilfully letteth them both escape, in this case the gardeine shall aunswere for the debt, and shall pay a fine for the escape of the other, as for a negligent escape, and the seruāt onely shall be put to aunswere to the felony, for the wilfull escape.

Also if a man make an other his generall receiuer, and that receiuer receiueth money of a creditour of his Master, and maketh him acquitance, and after payeth not his Master, yet that payement dischargeth the creditour, but if the creditour had taken an acquitance of him without paying him his money, that acquitance only were no barre to the Master, vnlesse he made him receiuer by writing, and gaue him authoritie to make acquitances, and then the authoritie must be shewed. And if the creditour in such case by agreement becometh the receiuer and him, deliuered to the

recei-

receiuer a hoyle or an other thing in recompence of the debt, that delinerie dischargeth not the creditor, vnlesse it be deliuered ouer vnto the Master, and he agree to it. For the receiuer hath no such power to make no such commutation, but his master giue him special cōmandement thereto.

Also if a seruant shewe a Creditor of his master, that his master sent him for his mony, and he paieth it vnto him, that paiement dischargeth him not, if the master did not send him for it in deede, except that it come after vnto the vse of the Master by his assent.

Also if a man make a bailife of a manor, & after the Lord of whom the Manor is holden graunt the seignioꝝ to another, & the bailife after paieth the rent to the grantee, that payment of the rent counteruaileth no attournement though it were by fine, ne shall not binde his master, till he attourne himselfe, but if the Lord of whom the land is holden disseised one of the seignioꝝ, & the bailife paieth the rent to the heire of the Lord, that is a good seisin to the heire, though the bailife had no commandement of his master to pay it. For it belongeth to his office to pay rents seruice, but not rent charge as some men say.

Also an encroachment by the bailife shal not bind the master in auowry, if he had no cōmandement of the master to pay it. Also if there be Lord, mesne, and tenant, & the tenant holdeth of the mesne as of his manor of D. the mesne maketh a bailife, and after the tenant maketh a fessement, the fesse tendeth notice to the bailif

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and he accepteth his rent with the arrearages, this notice shall not bind the Lord, ne compell him to alter his answer, for the office of a bailife stretcheth not thereto, but he must haue therein a speciall commaundement of his master. Also if a seruant ride on his masters horse to do an errant for his master into a Towne that hath authoritie to make attachements of goods vpon plaints of debt &c. and there vpon a plaint of debt made against the seruant, the masters horse is attached by the officers, thinking that the horse were his owne, and because the seruant appeareth not, the officers seise the horse as forfeit, in this case the Lord shal haue an action of trespass against the officers, & this attachement for the debt of his seruant, shall not binde him &c. but that an hoste or keeper of a Hauerne shalbe charged for their guests, vntill it be done by their assent or comaundement, I do not remember that I haue read it in the lawes of England.

¶ Whether a villaine, or a bondman may giue away his goods.

Cap. 43.

It appeareth in the said summe, called Summa Angelica in the title Donatio prima the 12. Paragraphe, that a bondman, nor a religious man, nor a Monke, ne such other that hath nothing in proper, may not giue, but it be by licence of their superiour, but that saying is not as it is said

said there, to be vnderstood of Religious persons that haue lawfull ministracion of goods, for if they giue with a cause reasonable, it is good, but without cause they may not.

Also if they by the licence of the Bpilate with the counsaile of the moze part of the conuent abide at schoule or goe on pilgrimage: they may giue as other honest scholers & pilgrimes be reasonably wont to do, and they may also giue almes where there is great neede, if they haue no time to aske licence.

Also if they see one in extreme necessity they may giue almes though their superiours prohibite them, for then all things be in common by the law of God. And therefore they be bound for to do it, as appeareth in the aforesaid summe called Summa Angelica in the title Eleemosina, the vi. Paragrafe. Doth not the law of England agree with these diuersities? S. For asmuch as the question is onely made whether a villaine or a bondman may giue away his goods or not: And it seemeth that after the aforesayde Summe, in the title which thou hast before rehearsed, that hee ne none other that hath no propertie may not giue, whereby it appeareth that the said Summe taketh it, that a bondman should haue no propertie in his goods, and that therefore his gift should be void: I shall somewhat touch what property and what authoritie a villeine hath in his goods after the Lawe of the Realme, and what authoritie the Lord hath ouer them. And I will leaue the diuersities that thou hast remembred before of religious persons to them that list to treat

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Further therein hereafter.

First if a Villeine haue goods eyther by his owne proper buying and selling, or otherwise by the gift of other men, hee hath as perfecte a p[ro]p[er]tie, and also as whole interest in them, and may as lawfully giue them away as any free man may. But if the Lord seise them befoze his gift: then they be the Lords, and the interest of the villaine therein is determined.

Also if the Lord seise part of the goods of his villaine in the name of all the goods that the villaine hath or shall hereafter haue, that seisure is good, for all the goods that he had at the time of the seisure. But if goods come to the villaine after the seisure he may lawfully giue them away notwithstanding the said seisure.

Also if the Lord claime all the goods of the villaine, & seiseth no part of them, that seisure is hold, and the gift of the villaine is good notwithstanding that seisure.

Also if a man be bounde to a villaine in an Obligation in a certaine summe of money, and the Lord seiseth the obligation, then the obligation is his, but yet he can take no action thereupon but in the name of the villaine, & therefore if the villaine release the debt, the Lord is barred by that release.

Also if a woman be a niese, and she marieth a free man, the goods immediatly by the marriage be the husbands, and the Lord shal come to late to make any seisure, and if the husband in that case maketh his wife his Executrix

and

and dieth, and the wife taketh the same goods againe as executrix to her husbände, yet it shal not be lawfull for the Lord to take them from her, though she be a niese as she was before the mariage.

Also if goods be giuen to a man to the vse of a villaine, and the Lord seiseth those goods, the seisure after some men is good by the statute made in the xix. yere of king Henry the seventh wherby it is enacted that the Lord shall enter into landes whereof other persons be seised to the vse of his villaine, and they say that the same statute shall bee vnderstood by equitie of goods in vse, aswel as of lands in vse.

Also if a villaine be made a Priest, yet neuerthelesse the Lord may seyle his goods and landes as hee myght befoze. And vntill the seiser hee may alpen them and giue them away as hee might befoze he was priest. And in this case the Lord may order him, so that he shall do him such seruice as belongeth to a Priest to do, befoze anie other, but hee may not put him to no labour nor other business, but that is honest and lawfull for a Priest to do.

Also if a villaine enter into religion in his yere of pzoofe, he may dispose his goods as hee might haue done befoze he tooke the habite vpon him.

And in likewise the Lord may seise his goods as he might haue done befoze, but if he after make executors, & be professed, and the executors take the goods to the performauce of the

The 44. Chapter.

the wil, then the Lord may not seise the goods though the executors haue them to the performance of the wil of him that is his villedin, nor in that case the Lord may not seise his bodie ne put him to no maner of labor, but must suffer him to abide in his religion vnder the obedience of his superiour as other religious persons do that be not bondmen: And the Lord hath no remedy in that case for losse of his bod man, but onely to take an action of Trespasse against him that receiued him into Religion without his licence, and thereupon to recouer damages as shal be assessed by iij. men. Many other cases there be concerning the gift of the goods of a villedine, wherefore I wil speake no more at this time, for this that I haue said suffiseth to shewe that the knowledge of the kings law is right expedient to the good order of conscience concerning such goods.

¶ If a Clerke be promoted to the title of his patrimony, and after selleth his patrimony and after falleth to pouertie, whether shall he haue his title therein or not.

Cap. 44.

In the said Summe called Rosella in the title Clencus quartus, the xxiiij. article, it is asked if a Clerke be promoted to the title of his patrimony, whether he may alien it at his pleasure, & whether in that alienation the solempnitie needeth to be kept that is to be kept in alienations

nations of things of the church, and it is answered there that it may not bee aliened noe more then the goods of a spirituall benefice, if it be accepted for a title, and expressely assigned unto him, so that it should go as into a thing of the Church, except he haue after an other benefice whereof he may liue. But if it be secretly assigned to his title, some agree it may be aliened, and in this case by the lawes of the realme, it may be lawfully aliened whether it be secretly or openly assigned to his title, for the Ordinarie ne yet the partie himselfe after the old customes of the Realme, haue no authoritie to bind any inheritance by authoritie of the spirituall law, and theretore the lande after it is assigned and accepted to bee his title, standeth in the same selfe case to be bought, sold, charged, or put in execution as it did befoze. And theretore it is somewhat to be maruailed that Ordinaries will admit such lande for a title, to the intent that he that is promoted should not fal to extreme pouerty, or go openly a begging, without knowing howe the comon law wil serue therein, for of mere right al inheritance within this Realme ought to be ordered by the kings lawes, and inheritance cannot be bounde in this Realme but by fine, or some other matter of record, or by feffement or such other, or at least by a bargain that changeth an vse. And ouer that to assign a state for terme of life to him that hath a fee simple befoze, is void in the lawes of Englande, without it be by such a matter that it worke by way of conclusion or estoppel, and in this case is no
such

The 44. Chapter

Such manner of conclusion, and therefore al that is done in such case in assigning of the said title is void. Also there is no interest that a mā hath in any manor, lāds, or tenemēts for terme of life, for terme of yeres or otherwise, but that he by the law of the realme may put away his right therein if he wil. And then whē this man alieneth his lande generally, it were against the law of the Realme that any interest of such a title shoulde remaine in him against his owne sale, and there is no diuersitie, whether the assignement of the title were open or secret, and so the title is boide to all intentes. And in likewise if a house of religion or any other spiritual man that hath graunted a title after the custome p̄sed in such titles, sell al the lands and goods that they haue: that sale in the lawes of England is good as against the title, and the buyer shal neuer be put to answer to the title. Also some say that vpon the common titles that be made daily in such case that if he fall to pouerty that hath the title, he is without remedy, for they be so made that at the common law there is no remedy for them, and if he take a suit in the spiritual court, many mē say that a Prohibition or a Premunire lieth. And therefore it were good for Ordinaries in such case to counsaile with them that be learned in the law of the Realme to haue such a fourme deuised for making of such titles, that if need be, would serue them that they be made vnto, or els let them be promoted without any title, and to trust in God that if they serue him as they ought to doo, he will prouide for them to

to haue sufficient for them to liue vpon. And beside these cases that I haue remembred before, there be many other cases put in the said summes for the well ordering of conscience, that as me thinketh are not to be obserued in this Realme, neither in law nor conscience.

D. Doest thou then thinke that there was default in them that drew the said summes and put therein such cases and such solutions that as thou thinkest hurt conscience, rather then to giue any light to it, specially as in this Realme. S. I thinke no default in them, but I thinke that they were right well and charitably occupied to take so great paine and labor as they did therein, for the wealth of the people and clearing of their conscience, for they haue thereby giuen a right great light in conscience to all Countries where the law Civil and the Lawe Canon, be vsed to temporall things. But as for the lawes of this Realme they knew them not, ne they were not bounde to know them, and if they had knowen them, it would little haue holpen the for the countries that they most specially made their treatises for, and in this countrey also they be right necessarye and much profitable to all men for such doubtles as rise in conscience in diuers other matters not concerning the law of the realme. And I marvel greatly that none of them that in this Realme are most bounden to doe that in them is to keepe the people in a right iudgment, and in a clerenesse of conscience haue done no more in time passed to haue the Lawe of the Realme knowen, then they haue done,
for

The 44. Chapter

For though ignorance may sometime excuse, yet
 the knowledge of the truth, and the true iudg-
 ment is much better, & sometime though igno-
 rance excuseth in part, it excuseth not in all, &
 therfore me thinketh they did very wel if they
 would yet be callers on to haue that point re-
 formed as shortly as they could. And now be-
 cause thou hast well satisfied my mind in ma-
 ny of these questions that I haue made, I pur-
 pose for this time to make an end. D. I pray
 thee yet shew me oz that thou make an end mo
 of these cases, that after thine opinion be set
 in diuers booke of learning of conscience, that
 as thou thinkest for lacke of knowledge of the
 law of the Realme, doe rather blinde conscie-
 ence then giue a light vnto it, for if it be so, the
 surely as thou hast said it would be reformed,
 for I thinke verely the lawes of the Realme
 in many cases must in this Realme be obser-
 ued as well in conscience as in the iudiciall
 courts of the Realme. S. I will with good will
 shew to thee shortly some other questions that
 be made in the said summe to giue thee ano-
 ther occasion to see therein the opinions of the
 said summes, and to see farther thereupon how
 the opinions and the lawes of the Realme doe
 agree together. And yet beside these questions
 that I intend to shew vnto thee, there be ma-
 ny other questions of the sayde summes that
 had as great neede to be more plainly declar-
 ed according to the lawes of the Realme, as
 those that I shall shew thee hereafter, oz as
 I haue spoken of before, but to the cases that
 I shal speak of hereafter I will shew thee no-
 thing

thing of my conceipt in them, but will leaue it to other that will of charitie take some further paine hereafter in that behalfe.

¶ Diners questions taken out by the Student of the summes, called Summa Rosella, & Summa Angelica, which he thinketh necessarie to be looked vpon, and to be seene how they stand and agree with the Lawe of the Realme.

Cap. 45.

The first question is this, whether a custome may breake a law positive. Summa Rosella, titulo Consuetudo Paragraph. 13.

The second is if a man attainted or banished be restored by the prince, whether shal that restitution stretch to the goods, Summa Rosella in the title Damnatus in principio.

Item if a man be outlawed of felony, abjured or attainted of murther, or felony, or her that is an Alceismus may be slaine by strangers, & see like matter thereto, Summa Angel. in the title Alceismus Para. 11.

This question is somewhat answered to, in a newe addition, as appeareth befoze in the 41. Chapter.

Item whether the maister shalbe bound by the act, or offence of his seruant, or officer, Summa Ros

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Angelica in the title Dominus Para. 4.

This question is answered to in an addition, as appeareth before in the xliij. Chapter.

Item whether a villaine may giue away his goods. Summa Angelica in the title Donatio prima Para. 9.

This question is answered to in an addition, as appeareth before in the xliij. Chapter.

Item whether an Abbot may giue &c. Summa Angelica, in the title donatio 1. Para. 10. & 39.

Item whether a woman couert, may giue away any good. And it is answered, Summa Angelica in the title donatio 1. Para. 11. that she may not, without she haue goods beside her dowrie, but only in almes.

Item if a man do treason, whether his gift of goods after, before attainder be good. Summa Angelica, in the title donatio 1. Parag. 12. & it seemeth there nay, and looke Summa Angelica in the title Alienatio, Para. 24.

Item if a man wittingly make a contracte betwene two kinsfolke, or other that may not lawfully marry together, whether he hath forfeit his goods. Summa Angel. in the title Donatio 1. Para. 14.

Item whether the father may giue to the sonne Summa Angelica in the title donatio 1. Parag. 19. and Summa Rosella, in the title Donatio 2. Parag. 42.

Item whether a man may giue aboue b. C. s. absque insinuatione. Summa Angelica, in the title Donatio 1. Para. 20.

Item whether a gift shall be auoided by an in-

Ingratitudo. Summa Rosella, in the title donatio 1. Parag. 17. & 29. and there it is said that the gift is boide by the law of nature, & looke Summa Angelica, in the title Donatio prima, Paragrafe 42. & 45.

Item where any gift betweene the husband and the wife may be good, and it is saide yea, when the husbände geueth it, Causa remunerationis, Summa Rosella, in the title Donatio 1. Parag. 32.

Item if a man make a swil, and enter into religion, whether he may after reuoke the swil, & it is said, that Friers & Monks may not, and other may. Summa Rosella, in the title donatio 1. Para. 35. in Fine.

Item if a man giue an other a town with al the rights that hee hath in the same, whether the patronage &c. and the tithes passe. Summa Rosella, in the title Ecclesia 1. Para. 56.

Item whether all that is bought with the money of the Church be the churches. Summa Rosella in the title Ecclesia 1. Para. 7.

Item if a gift made to a Monastery may be auoided by that the giuer hath children after the gift. Summa Rosella in the title donatio 1. Para. 43.

Item if a man buy a thing vnder the halfe price, whether he be bound by the lawe to restore &c. Summa Rosella, in the title Emptio, & venditio, Para. 6.

Item whether a common theefe vel communis depopulator agrorum may abiure, Summa Rosella, in the title Emunitas 2. in principio. Et habetur

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betur ibi in fine qd' licet leges excipiant plures personas tum per ius canonicum legibus derogatum est.

Item whether a man shal take the Church for great enozmious offences that is not murder, nor felony. Summa Rosella, in the title Emunitas 2. Parag. 3. 11.

Item if a man take one in the high way, and draw him out, & there beateth him, whether he shal haue the punishment that is ordained for them that strike one in the highway. Summa Rosella, in the title Emunitas 2. Parag. 6.

Item whether he that taketh the Church may after the offence be iudged to death. Summa Rosella, in the title Emunitas 2. Para. 8.

Item whether the Bishops palleis be sanctuarie. Summa Rosella, in the title Emunitas. Parag. 24.

Item whether the dignitie of the Bishop, or priesthood discharge bondage. Summa Rosella, in the title Episcopus in principio.

Item whether a Clarke is bound to pay any Impositions, or tallages, for his patrimony, or otherwise. Summa Rosella in the title Excommunicatio 1. diuisione oct. Para. 4. and v. & vi. & diuisione nona. Para. 1.

Item if it were ordeined by statute, that if a man sell &c. he shal giue to the king ij. s. whether a clarke be bound to giue it if he sel of his prebend. Summa Rosella in the title Excommunicatio 1. diuisione nona. Para. 3.

Item if it be ordeined by statute, that there shal not be laied vpon a dead person, but such a certaine clothe, or thus many tapers, or candles

dels, whether the statute be good & it is left for a question. Summa rosella in the title Excommunicatio j. diuisione xviij. Para. viij. in Fine.

Item if a man make a lease of a Mill for terme of yerres, & it is agreed that the lessee shal grind the lessor tolle free during the terme, after the lessor is made a Erie or a duke, & hath greater household the before, whether the lessee be bound there &c. Summa rosella in the title Familia Para. 5.

Item if a maister will not pay his seruants wages that hath serued him faithfully, whether that the seruāt may take secretly as much goods of the maisters &c. & if he do whether he be bound to restitution. Summa rosella in the title Familia, Para. 6.

Item things immovable of the Church may not be giuen, Summa rosella in the title Feodum, Parag. 1. And see there in Principio what Feodum is.

Item whether the sonnes bastardes, & the sonnes lawfully begotten shal inherite together. Summa rosella in the title Filius, Para. 1.

Item whether father and mother may succeed to their bastards, Summa rosella in the title Filius, Para. 4.

Item whether the father may leaue any of his goods to his bastards, Summa rosella in the title Filius, Para. 5. and Summa rosella in the title Societas, Para. 23.

Item whether the offence of the father shal hurt the sonne in temporal things. Summa rosella in the title Filius.

Item if a man giue all his lands, and goods to his children, whether a bastard shal haue any part

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ny part Summa rosella in the title Filius, Para. 22.
Item to whom treasoz found belongeth. Summa rosella in the title Furtum, Para. 11.

Item if a deere, oz other wild beast that is so sore hurt that he may be taken, cometh into an other mans ground, whether it be his that oweth the ground, oz his that strake him, Summa rosella in the title Furtum, Para. 13.

Item whether theft be in a litle thing as wel as in a great thing, Summa rosella in the title Furtum, Parag. 18.

Item what pain a theefe shal haue. Summa rosella in the title Furtum, Para. 22.

Item that if goods of dead men goe to the heires, & that of dampned men, s. De terris. Summa rosella in the title Hereditas, Para. 1.

Item whether a man shalbe said giltye of murther by commandement, counsel, oz assent, Summa rosella in the title Homicidium 2. per totum, & like matter is Homicidium iij. in principio and in diuers other cases.

Item a man maketh a priuy contract with a woman, & after hath a child by her, & after marieth an other woman, & hath a child, shee not knowing the first contract, which of the children shalbe his heire. Summa rosella, in the title Illegitimus Para. 4.

Item whether the Pope may legitimate one to tempozal things, & to succeed, Summa rosella in the title Illegitimus Para.

Item if goods bee founde that were left of the owner as forsaken, who hath right to the. Summa rosella in the title Inuenta Para. 2. And looke Summa rosella in the title Furtum, Para. 17.

And

thus I make an end of these questions, & because thou desirest me in the xxxi. Chapter to shew thee somewhat where ignorance excuseth in the law of the realme and where not. I will aunswere somewhat to thy question, & so commit thee to God.

¶ V Where ignorance of the law excuseth in the laws of England, and where not.

Cap. 46.

Ignorance in the law though it be invincible with not excuse as to the law but in few cases for every mā is bound at his peril to take knowledge what the law of the realme is, aswel the law made by statut as the cōmon law, but ignorance of the deed, which may be called the ignorance of the truth of the deed, may excuse in many Cases. D. I put case that a statut penal be made, & it is enacted that the statute shalbe proclaimed by such a day in every shire, & it is not proclaimed before the day, & after the day a man offended against the statute, shal he run in þe penalty? S. I think yea, if there be no farther words in the statut to help him, that is to say, þif the proclamation be not made that no mā shalbe bound by the statut, & þe cause is this, there is no statut made in this Realme, but by the assent of the Lords spiritual & tēporal, & of al the cōmons, that is to say, by the knights of the shire, citizens, & burghesses that be chosen by assent of the cōmons, which in the parliament represent the estate of the whole cōmons.

C. ij.

And

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And every statute there made, is of as stronge effect in the lawe, as if all the commons were there present personally at the making therof, & like as there needed no Proclamation, if all were there present in their own person, so the law presumeth there nedeth no Proclamation, whē it is made by their authority, & then whē it is enacted that it shalbe proclaimed &c. that is but of the favour of the makers of the statute, & not of necessity, & it cannot therefore be taken, that their intent was that it should be void if it were not proclaimed. Nevertheless some be of opinion that if a man before the day appointed for the Proclamation offend the Statute that he should not in that case be punished, for they say that the intent of the makers of y^e Statute shalbe taken to be, that none should be punished before the day, which is a doubt to some other, But admit it be as they say, that he shalbe excused, yet he is not excused by the ignorance of the law, but because the intent of the makers excused him. D. It is enacted in the vij. yere of R. 2. Cap. 6. that every Shirefe shall proclaim the Statute of Winchester three times every yere, in every market towne, to thintent the offenders shal not be excused by ignorance, & it seemeth by those words that if no Proclamation be made, that the offender may be excused by ignorance. S. Some take the intent of that Statute to be, that the people by that proclamation should haue knowledge of the Statute of Winchester, to the intent that the forfeiture therein may be taken aswell in conscience as in law, and some take the Statute to be
of

of such effect as thou speakest of, that is to say, that no forfeiture should growe vpon the statute of Winchester against them that were ignorant, but Proclamation were made according to the said statute of Richard. And if it be so taken, the statute of Winchester is of smal effect against most part of the people, for certain it is that the said Proclamation is not made: but admit it be as they say, then they that be ignorant be excused by the said particular estatute, specially made in that case & not by the generall rules of the law, and sometime in diuers statutes Denais they that be ignorant be excused by the selfe statute, as it is vpon the statute of Richard the 2. the xij. pere, the second statute & the last Chapter where it is enacted, that if any person take a benefice by prouision that he shalbe banished the Realm & forfeit al his goods, and that if he be in the Realm, he auoid within vi. weekes after he hath accepted it, and that none shal receiue him that is so banished after the said vi. weekes vpon like forfeiture if he haue knowledge, & so he that hath no knowledge is excused by the expresse words of the statute. And in likewise he that offendeth against Mag. cha. is not excommunicated but he haue knowledge that it is prohibite that he doth. For they be onely excommunicated by the sentence called Sententia lata super cartas, that doth it willingly, or that doth it by ignorance, & correct not themselves within x. daies after they haue warning. And sometime they that be ignorant of a statute be excused from the penalty of y^e statute because it shal be

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taken that the intent of the makers of the statute was that none should be bound but they that haue knowledge, but that any man shalbe discharged in the law by ignorance of the law only for y^e he is ignorant, I know few causes except it might be applied to infants y^e be in their infancy & within yerres of discretion, for if ignorance of the law should excuse in y^e law many offenders would pretend ignorance. D. Shall an infant that hath discretion & knoweth good from euil be punished by a penall statute that he is ignorant in? S. If the statute be that for the offence he should haue corporall paine, I thinke he shalbe excused and haue no corporall paine, but I suppose that that is not for the ignorance, for though he knew the statute & willingly offended, yet I think he shal haue no corporall pain, As where he pleaded Joyn-tenancy by deed that is found against him, or if he pleade a Record in Masse & faileth of it at his day, but that is because the law presumeth that it was not thintent of the makers of the statute that he should haue that punishment, but if he be of yerres of discretion to know good from euil, whether he shall then forsaith the penalty of a penall statute it is moze doubt, for it is commonly holden, that if an infant had not bin excepted in the statute of foreiudgmēt, that the foreiudgment should haue bound him, & so shal his cesser, & his leuying of a crosse against the statute, or if he be a gardein of a prison and suffer a prisoner escape he shal pay the debt because the statutes be general, & if he should by y^e statutes be bound within age, like reason wil
that

that he may by a statut penal leese his goods. D.
 If an infant do a murder or a felony at such
 peres as he hath discretion to knowe the law,
 shal he not haue the punishment of the law as
 one of full age? S. I thinke yes, but that is by
 an old Maxime of þ law for eschewing of mur=
 thers & felonies, & so it is of a trespass, but these
 cases run not vpon the ground of ignorañce, but
 with what acts infants shall be punishable or
 not punishable for the tenderneſſe of their age,
 though they be not ignorant: D. We not yet
 knights & noble men that are bound most pro=
 perly to set their study to actes of chivalry for
 defence of the realme, & husbandmen that must
 vse tillage & husbandry for the sustenance of þ
 comminalty, & that may not by reason of their
 labor put themselves to knowe the law, be dis=
 charged by ignorance of the law: S. No verely,
 for sith all were makers of the statute, the law
 presumeth that al haue knowledg of that that
 they make as it is said befoze: and as they be
 bound at their perill to take knowledg of the
 statute that they make: so be al them that come
 after them. And as for knights & other nobles
 of the realme, me seemeth that they should bee
 bound to take knowledg of the law aswel as
 any other within the realme, except them that
 giue themselves to the study & exercise of þ law,
 & except spiritual iudges that in many cases be
 bound to take knowledg of the law of the re=
 alme as is said befoze in Cap. 25. For though
 they be bound to actes of chivalry, for the defence
 of the Realme, yet they be bound also to the
 actes of Justice, & that it seemeth moze then

C.iiij.

other

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other be by reason of their great possessions & authority. And for the wel ordering of the tenants servants & neighbors, that many times haue need of their help, & also because they be oft called to be of the kings counsel, & to the general counsels of the realme, where their counsel is right expedient & necessary for the common wealth, & therefore if the noble men of this realme would see their children brought vp in such maner, that they should haue learning & knowledg, more then they haue comonly vsed to haue in time past, specially of the grounds & principles of the law of the realm, wherein they be inherite though they had not the high cunning of the whole body of y^e law, but after such maner as M. Fortescue in his book that he intituleth the book de laudibus legū Angliæ aduertiseth the prince to haue knowledg of y^e laws of this realme, I suppose it would be a great helpe hereafter to the ministration of Justice of this realme, a great surety for himselfe, & a right great galdnes to al the people: for certein it is, the more part of the people would more gladly heare that their rulers & gouernors entēded to order them with wisdom & Justice, thē with power & great retinues. But ignorance of the deed many times excuseth in the laws of England, & I shal shortly touch some cases therof to shew where it shall excuse, & where it shall not excuse, & then y^e reader may add to it after his pleasure & as he shal think to be conueniēt.

Certain cases & grounds where ignorance of the deed excuseth in the laws of England, & where not.

Cap

If a man buy a horse in open market of him
 in right hath no property in him, not know-
 ing but that he hath right, he hath good title &
 right to the horse and the ignorance shall ex-
 cuse him. But if he had bought him out of the
 open market, or if he had known that the sel-
 er had no right, the buying in open market had
 not excused him. Also if a man retaine another
 mans seruāt not knowing that he is retained
 with him, the ignorance excuseth him both for
 the offence that was at the comon law against
 the Maxime that prohibited such reteining of
 another mans seruāt, And also against the Sta-
 tute 33. Ed. 3. Whereby it is prohibite vpon
 paine of imprisonment that none shall retaine
 no seruāt that departeth within his terme
 without licence or reasonable cause, for it hath
 bin alway taken, that the intent of the makers
 of the said statute was that they that were ig-
 norāt of the first reteining should not run in a-
 ny penalty of the statute. And the same law is
 of him that retaineth one that is ward to an-
 other, not knowing that he is his ward. And
 if homage be due & the tenant after that the ho-
 mage is due maketh a feoffement, & after y^e Lord
 not knowing of the feoffement distraineth for
 the homage, in that case that ignorance shal ex-
 cuse him of his damages in a Repleuin though
 he cannot auow for the homage, but if he had
 known of the feoffement, he should haue yel-
 ded damages for the wrongful taking. Also if
 a man be bound in an Obligation that he shall
 repaire

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repaire the houses of him that he is bound to
 by such a certaine time as oft as neede shall re-
 quire, & after the houses haue need to be repai-
 red, but he that is bound knoweth it not, that
 ignorance shal not excuse him for he hath woud
 himselfe to it, and so he must take knowledge
 at his peril, but if the condition had bin that
 he shoulde repaire such houses as he to whom
 he was bound should assigne, & after he assig-
 neth certain houses to be repaired, but he that
 is bound hath no knowledge of that assignmēt,
 that ignorance shall excuse him in the law, for
 he hath not bound himselfe to no reparation in
 certain, but to such as the party will assigne, &
 if he none assigne, he is bound to none, & there-
 fore sith he that should make the assignement
 is priuy to the deed, he is bound to giue notice
 of his own assignement, but if the assignement
 had bin appointed to a stranger, then the obli-
 gor must haue taken knowledge of the assign-
 ment at his perill. Also if a man buy landes
 whereunto another hath title which the buier
 knoweth not, that ignorance excuseth him not
 in the law no more then it doth of goods. Also
 if a seruant come with his masters horse to a
 Towne that by custome may attach goods for
 debt, & vpon a plaint against the seruant, an of-
 ficer of the towne, by information of the party
 attacheth the masters horse thinking that it
 were the seruants horse, that ignorance excu-
 seth him not, for when a man will do an act as
 to enter into land, seile goods, take a distresse
 or such other, he must by the law at his perill
 see that that he doth be lawfully done, as in
 the

the case befoze reherfed. And in likewise if a sherife by a Replewin deliuer othe beasts the were distrained, though the party that distrained shewd him they were the same beasts, yet an action of Trespas lieth against him, & ignorance shall not excuse him, for he shal be compelled by the law as al Officers commonly be, to execute the kinges writ at his perill according to the tenor of it, & to see that the act that he doth be lawfully done. But otherwise it is after some men if vpon a Summons in a Prae-cipe quod reddat the sherife by informatiō of the demandant summoneth the tenant in another mans lands, thinking it for the tenants land, there they say he shalbe excused, for in that case he doth not seise the land ne take possession in the land, but onely doth sumon the tenant vpon the land, & the writ commaundeth him not that he shal summon the tenant vpon his own land, but generally that he shal summon him, & knoweth not in what land, and then by an old Maxime in the lawe it is taken that he shall sumon him vpon the land in demaund, & therefore though he mistake the land & be ignorant of it, yet if the demandant informe him that that is the land that he demandeth that sufficeth to the sherife as to his entre for the summoning as they say, though it be not the tenants. And here I make an end of these questions for this time. D. I pray thee yet oz we depart take a little more paine at my desire. S. What is that? D. That thou wouldest shewe me thy mind in diuers cases as the law of the realme which as me semeth stand not so clerely
with

The 48. Chapter

With conscience as they should do. And therefore I would gladly heare thy conceipt therein how they may stand with conscience. s. But the cases and I shall with good will say as I think to them.

¶ The first question of the Doctor, How the law of England may be sayd reasonable that prohibiteth them that be arraigned vpon an Indictment of felony or murder to haue counsaile.

Cap. 48.

ME thinketh that the law in that point is very good & indifferēt, taking the lawe therein as it is. D. Why, what is the law in this point? S. The law is as thou saiest, that he that haue no counsaile, but then the lawe is farther, that in all things that pertainē to the order of pleading, the Iudges shall so instruct him and order him that he shall runne into no jeopardy by his mispleading, As if he wil plead that he neuer knew the man that was slaine or that he had neuer a peny worth of y goods that is supposed that he should steale, in these cases the iudges are bound in conscience to excuse him that he must take the generall issue and pleade that he is not guiltie: for though they be set to be indifferent betwene the king and the partie as to the partie, and to the principall matter as they be in all other matters, yet they be in this case to see that the partie take no hurt in forme of pleading in such matters,

ters, as he shal shew to be the truth of the matter, and that is a great fauor of the law, for in appeale, though the Iustices of fauor wil most commonly helpe forth the party, & sometime his counsell also in the forme of pleading, as they do also many times in common ples, yet they might in those cases if they would bid the partie, and his counsaile pleade at their peril. But they may not do so with conscience vpon Indictments as me semeth: for it were a great vnreasonableness in the law, if it should prohibite him that standeth in leoperdie of his life that he should haue no counsaile, & the to driue him to pled after the strait rules, & formalities of the law that he knoweth not. Doct. But what if he be known for a common offender, or that the Iudges know by examination, or by an euident presumption that he is guilty, & he asketh Sanctuary, or pleadeth misnomer, or hath some Recorde to plebe, that he cannot plede after the fourme: May not the Iudges in such caies bid him pleade at his perill? S. I suppose they may not, for though he be a common offendor, or that he be guiltie, yet he ought to haue that the law giueth him, and that he shal haue the effect of his ples, and of his matters entred after the fourme of the Lawe, and also sometime a man by examination, and by witnesse may appeare guiltie that is not. And in likewise there may be a vehement suspition that he is guiltie, and yet he is not guiltie, and therefore for such suspition, or vehement presumptiōs me thinketh a man may not with conscience be put from that he ought to haue
by

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the law, ne yet although the iudges knew it of their owne knowledge: but if it were in appeale I suppose that the Iudges might doe therein as they should think best to be done in conscience, for there is no lawe that bindeth them to instruct him, but as they do commonlye the parties of fauor in all other cases, but they may if they will bid them pleade at their perill by aduise of their counsaile, & if the appelee be poore, & haue no counsel, the court must assigne him counsell if he aske it, as they must doe in all other places, & that me thinketh they are bound to doe in conscience though the appelee were neuer so great an offender, & though the Iudges knew neuer so certainly that hee were guilty, for the law bindeth them to do it.

And so me thinketh that there is great diuersity betwene an indictment and an appeal. And the reason why the law prohibiteth not counsell in appeale as it doth in an indictment, I suppose is this. There is no appeale brought, but that of common presumption the appellante hath great malice against the appeale. And when the appeal is brought by the wife of the death of her husband, or by the sonne of the death of his father, or that an appeale of robbery is brought for stealing of goods. And therefore if the Iudges shoulde in those cases shew theselues to instruct the appeles, the appellants would grutch & think them partiall, and therefore aswel for the indemnity of the court, as of the appellee in case that he be not guilty, the lawe suffreth the appelee to haue counsel, but when that a man is indicted at the kings

kings suit, the king intendeth nothing but iustice with fauor, and that is to the rest & quietnes of his faithfull subiects, & to pulsway misdoers among them charitably, & therefore he wil be contented that his Iustices shall helpe forth the offendors according to the truth, as farre as reason & iustice may suffer. And as the king wil be contented therin: it is to presume that the counsel wil be cōtented. And so there is no daunger thereby, neither to the court ne to the party, & as I suppose for this reason it began that they shoulde haue no counsell vpon indictmēts, & that hath so long continued that it is now growē into a custome, & into a maxime of the law, that they shall none haue. D. But if the Iudges knew of their owne knowledge that the indicted is guilty, & then he pledeth misnomer or a Recoꝛde that he was auerfoits arraigned, & acquite of the same murder, or felony, and the Iudges of their owne knowledge know that the plee is vnttrue, may they not then bid him plede at his peril? S. I thinke yes, but if they know of their owne knowledg that he were guilty of the murder or felony, but that h plee was vnttrue they knew not but by cōiecture or information, I thinke they might not then bid him plede at his peril.

¶ The second question of the Doctor whether warranty of the yonger brother, that is taken as heire, because it is not knowen but that the eldest brother is dead, be in conscience a bar vnto the eldest brother, as it is in the law.

Cap.

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Cap. 49.

A Man seised of landes in fee hath issue two sonnes, the eldest sonne goeth beyonde the Sea, & because a common voice is that he is dead, the yonger brother is taken for heire, the father dieth, & yonger brother entreth as heire, & alieneth the land with a warrant, and dieth without any heire of his body, & after the elder brother commeth againe, and claimeth the land as heire to his father, whether shall he be barred by that warrant in conscience as he is in the law? S. It is a Maxime in the Lawe, that the eldest brother shall in that case be barred. And that Maxime is taken to be of as strong effect in the law, as if it were ordeined by statute to be a barre. And it is as old a law that such a warrant shall barre the heire, as it is that the inheritance of the father shall only descend to the eldest sonne, And with the law so is, why should not then conscience followe the law, as well as it doth in that point, that the eldest sonne shall haue the lande? D. For there appeareth no reasonable cause whereupon the Maxime might haue a lawfull beginning, For what reason is it that the warrantie of an auncestor that hath no right to land, shoulde barre him that hath right? And if it were ordeined by statute, that no man shoulde haue an other mans land, & no cause is expressed why he should haue it, in that case though he might hold the land by force of that statute, yet he could not hold it in conscience, wout there were

Swere a cause why he should haue it, & these ca-
 ses be not like as me seemeth to the forfeiture
 of goods by an Outlawry, for I will agree for
 this time, that that forfeiture standeth with
 conscience, because it is ordained for ministra-
 tion of iustice, but I cannot perceiue any such
 cause heere: & therefore me thinketh that this
 case is like to the Maxime, that was at the co-
 mon law of wrecke of the Sea, that is to say,
 that if a mans goods had bin wrecked vpon the
 sea, that the goods should haue bin immediatly
 forfeited to the king. And it is holden by all
 Doctors that that law is against conscience,
 except in certain cases that were too long to re-
 herse now. And it was ordeined by the statute
 at VVestminster the first, that if a Dogge or catte
 come aliuie to the land, that the owner if he
 proue the goods within a yere and a day to be
 his, shal haue them, whereby the said lawe of
 wreckes of the sea, is made more sufferable the
 it was before, & some thinke in this case that
 this warrantie is no barre in conscience though
 it be a barre in the law. S. I pray thee keep that
 case of wrecke of the sea in thy remembrance,
 and put it hereafter, as one of thy questions, &
 thereupon shew me thy father minde therein,
 and I shal with good will shew thee my mind,
 & as to this case that we be in now, me think-
 eth the Maxime whereby the warrantie shalbe
 a barre, is good and reasonable, for it seemeth
 not against reason that a man shalbe bound, as
 to temporal things, by the act of his auncestor
 to whom he is heire, for like as by the lawe it
 is ordained, that he shali haue aduantage by
 the

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the same auncester, and haue all his landes by
 discent if he haue any right, so it seemeth that
 it is not vnrasonable, though the law for the
 priuety of blood that is betwene them suffer
 him to haue a disadvantage by the same aun-
 cester, but if the Maxime were that if any of
 his auncesters, though he were not heire to
 him made such a warranty, that it shoulde be a
 barre, I think that Maxime were against co-
 science, for in that case there were no ground,
 nor consideration to proue how the said Max-
 ime shoulde haue a lawfull beginning, wherefore
 it were to be taken as a Maxime against the
 law of reason, but me thinketh it is otherwise
 in this case, for the reason that I haue made
 before. D. If the father bind him and his heirs
 to the paiement of a debt and dye, in that case
 the sonne shall not be bound to pay the debt,
 vntles he haue assets by discent from his father.
 And so I would agree, that if this man haue
 assets by discent from the auncester that made
 the warranty, that he shoulde haue bin barred:
 but els me thinketh it shoulde stande hardly
 with conscience, that it shoulde be a barre. S. In
 that case of the obligation, the law is as thou
 saiest, & the cause is for that the Maxime of the
 law in that case is none other, but that he shal
 be charged if he haue assets by discent, but if
 the Maxime had bin generall that the heire
 shoulde be bound in that case without any as-
 sets, or if it were ordeined by statute that it
 shoulde be so, I thinke that both the Maxime
 and the statute shoulde well stand with consci-
 ence. And like law is where a man is vouched
 as

as heire, he may enter as he that hath nothing by discent, but where he claimeth the land in his owne right, there the warrantie of his auncester shalbe a barre to him, though he haue no assets from the same auncester, & though it bee said in Ezechiel Chap. 18. That the sonne shall not beare the wickednes of the father that is vnderstood spiritually. But as to temporall goods the opinion of Doctors is, that the sonne sometime may beare the offence of his father.

D. Now that I haue heard thy mind in this case, I wil take aduise ment therein till a better leisure. And will now proceed to another question. S. I pray thee do as thou saiest, & I shall with good will make answer thereunto aswell as I can.

¶ The third question of the Doctour, If a man procure a collateral warrantie, to extinct a right that he knoweth an other man hath to lande whether it be a barre in conscience as it is in the lawe or not.

Cap. 50.

A Man is disseised of certaine land, the disseisor selleth the land &c. the alienee knowing of the disseisin, obtaineth a release with a warrantie of an auncester collateral to the disseisor that knoweth also the right of y^e disseisor. That auncester collateral dieth, after whose death the warrantie descendeth vpon the disseisee, whether may the alienee in y^e case hold the land

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in conscience as he may by the law. S. With the
warranty is discended vpon him, whereby he
is barred in the law, me thinketh that he shall
also be barred in conscience, & that this case is
like to the case in y next chapter before, where-
in I haue said that as me thinketh it is a barre
in conscience. D. Though it might be taken for
a barre in conscience in that case, yet me think-
eth in this case it cannot, for in that case the
younger brother entred as heire, knowing none
other but that he was heire of right, and after
when he sold the land the buyer knew not but
that he that sold it had good right to sel it, and
so he was ignorant of the title of the eldest bro-
ther, & that ignorance came by the default and
absence of himselfe, that was the eldest bro-
ther. But in this case aswell the buyer, as hee
y made the collateral warranty, knew the right
of the disseiser, & did that they could to extinct
the right, and so they did as they would not
should haue bin don to them, & so it seemeth y
he that hath the land may not with conscience
keepe it. S. Though it be as thou saiest that all
they offended in obtaining of the said collate-
ral warranty, yet such offence is not to be con-
sidered in the law, but it be in very speciall ca-
ses, for if such allegations should be accepted in
the law, releases, & other writings should bee
of smal effect, and vpon euery light surmise, all
writings might come in triall whether they
were made with conscience or not. Therefore
to auoid that inconuenience, the law wil drine
the party to answer onely whether it be his
deede or not, and not whether the deede were
made

made with conscience or against conscience, and though the party may be at a mischief thereby, yet the law will rather suffer the mischief then the said inconvenience. And like law is if a woman couert for dread of her husbande by compulsion of him leuy a fine, yet the woman after her husband's death shall not be admitted to shew that matter in avoiding of the fine for the inconvenience that might followe therupon. And after the opinion of many men, there is no remedy in these cases in the Chancery: for they say that where the common law in cases concerning inheritauce putteth the party from any auerment for eschewing of an inconvenience that might follow of it among the people, that if the same inconvenience should followe in the Chauncerie if the same matter should be pleded there, that no Sub pena should lie in such cases, & so it is in the cases before rehearsed, for asmuch vexation, delay, costs and expenses might grow to the partie if he should be put to answer to such auerments in the Chancery, as if he were put to answer to the same at the common law, and therefore they thinke that no Sub pena lieth in the said cases ne in other like vnto them. Nevertheless I do not take it by their opinio is that he that bought the land in this case may with good conscience hold the land, because he shall not be compelled by no law to restore it, but that he is in conscience and by the law of reason bound to restore it, or otherwise to recompence the party, so as he shall be contented, and I suppose verely it is so if he will keepe his soule out of perill and

The 51. Chapter.

daunger. And after some men to these cases may be resembled the case of a fine with non-claim that is remembred before in the 14. chap. of this booke, where a man knowing another to haue right to certaine land causeth a fine to be leuied thereof with Proclamation & the other suffereth v. yerres to passe without claime, in that case he hath no remedy neither by common law, nor by Sub pena, & that yet he that leuied the fine, is bound to restore the land in conscience. And me thinketh I could right well agree that it should be so in this case, and that specially, because the party himselfe knoweth perfectly that the said collateral warrāty was obtained by coine & against conscience.

¶ The fourth question of the Doctour is of
wrecke of the Sea.

Cap. 51.

I pray thee let me now heare thy minde howe the lawe of England concerning goods that be wrecked vpon the sea may stand with conscience, for I am in great doubt of it. S. I pray thee let me first heare thine opinion what thou thinkest therein. D. The statute of VVest. the 1. that speaketh of wreckes is, that if any man, dogge or catte, come alive into the land out of the ship or barge, that it shall not be iudged for wrecke, so that if the partie to whom the goods belong come within a yere and a day and proue them to be his, that he shall haue them or els that they shall remaine to the king. And mee thinketh that the said statute standeth not with

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conscience, for there is no lawfull cause why the party ought to forsake his goods ne that the King or Lords ought to haue the, for there is no cause of forfeiture in the party, but rather a cause of sorrow & heavines. And so the law seemeth to adde sorrow upon sorrow. And therefore Doctors hold commonly that he that hath such goods is bound to restitution, and that no custome may helpe, for they say it is against the commaundement of God, Leui. 19. 'Where it is commanded that a man should loue his neighbour as himselfe, and that they say he doth not, that taketh away his neighbours goods', but they agree that if any man haue cost and labor for the sauing of such goods wrecked, specially for such goods as would perish if they lay still in the water, as Sugar, Paper, Salt, Mele, and such other, that he ought to be allowed for his costs & labor, but he must restore the goods except he coulde not saue them without putting his life in leoperdie for them, and then if he put his life in such leoperdy and the owner by common presumption had had no way to haue saued them, the it is most commonly holden that he may keepe the goods in conscience, but of other goods that would not so lightly perishe, but that the owner might of common presumption saue them himselfe, or that might be saued without any perill of life, the takers of them be bounde to restitution to the owner, whether he come within the yere or after the yere.

And me thinketh this case is somewhat like to a case that I shall put, if there were a lawe
 ¶.iii. and

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and a custome in this realme or if it were orde-
ned by statute, that if any alien came through
the realme in pilgrimage and died, that all his
goods should be forfait, that law should bee a-
gainst conscience, for there is no cause reason-
able why the said goods shoulde bee forfait.
And no more me thinketh there is of wrecke.

5. There be diners cases where a man shal lose
his goods & no default in him, As where beasts
stray away from a man and they be taken by
and proclaimed and the owner hath not heard
of them within the yere and the day, though
he made sufficient diligence to haue heard of
them, yet the goods be forfait and no default in
him, and so it is where a man killeth another
with the sword of J. at Stile, the sword shall
be forfait as a Deodand, & yet no default is in
the owner, & so me thinketh it may be in this
case, and that with the common law before the
said statute was that the goods wreacked byon
the say shall be forfait to the king that they be
also forfait now after the statute, except they
be saved by following the statute, for the law
must needs reduce the propertie of all goods to
some man, & when the goods be wreacked it see-
meth the property is in no man, but admitte
that the propertie remaine still in the owner,
then if the owner percase would neuer claime,
then it shoulde not be known who ought to
take them: and so might they be destroyed and
no profit come of them, wherefore me thinketh
it reasonable that the law shall appoint who
ought to haue them, and that hath the law ap-
pointed to the king as Soueraigne and head
ouer

ouer the people. D. In the cases that thou hast put befoze of the stray and Deodand, there bee considerations why they be forfait, but it is not so here, and me thinketh that in this case it were not vnreasonable that the law would suffer any man that would take them to take and keepe them to the vse of the owner, sauing his reasonable expenses, and this me thinketh were moze reasonable law then to pul the propertie out of the owner without cause. But if a man in the sea cast his goods out of the ship as forsaken, there Doctors hold that euery mā may take them lawfully that will, but otherwise it is as they say if he throw them out for feare that they should ouercharge the ship.

S. There is no such law in this Realme of goods forsaken, for though a man sweyue the possession of his goods and saiethe he forsaketh them, yet by the lawe of the Realme the propertie remaineth still in him, and he may seise them after when he will, and if any man in the meane time put the goods in safegarde to the vse of the owner, I thinke he doth lawfully and that he shalbe allowed for his reasonable expenses in that behalfe, as he shalbe of goods found, but he shall haue no property in them no moze then in goods found. And I would agree that if a man prescribe, that if he find any goods within his manor that he shoulde haue them as his owne, that that prescription were boide, for there is no consideration howe the prescription might haue a lawfull beginning, but in this case me thinketh there is. D. What is that? S. It is this, The king of the old cu=
stome

The 52. Chapter

Some of the realme, as the Lord of the narrow sea, is bound as it is said to scour the sea of the pirats & petit robbers of the sea. And so it is read of the noble king Saint Edgare, that he would & wise in the yere scour the sea of such pirates, but I meane not therby that the king is bound to conduct his Marchants vpon the sea against al outward enemies, but that he is bound only to put away such pirates and petit robbers. And because that cannot be done without great charge, it is not vreasonable if he haue such goods as be swercked vpon the sea toward the charge. D. Upon that reason I will take a respite til another time.

The v. question of the Doctour whether it stande with conscience to prohibite a Iury of meate and drinke til they be agreed.

Cap. 52.

If one of the xij. men of an enquest know the very trouth of his owne knowlege, and instructeth his felowes thereof, & they wil in no wise giue credence to him, & thereupon because meate & drinke is prohibited them, he is driven to that point that either he must assent to the, and giue their verdict against his owne knowledge, and against his owne conscience, or dye for lacke of meate, how may the law then stand with conscience that will drive an innocent to that extremitie, to be either forsworne or to be famished & die for lacke of meate. S. I take not the law of the realme to be that the Iury after they

they be swozne may not eate nor drinke til they be agreed of the verdit, but trowth it is there is a Maxime, and an old custome in the law, that they shall not eate nor drinke after they be swozne til they haue giuen their verdit without the assent and licence of the Justice, & that is ordeined by the law for eschewing of diuers inconueniencies that might folloiw threupon, & that specially if they should eat or drinke at the colkes of the parties, & therefore if they do the contrary, it may be layed in arrest of the iudgement, but with the assent of the Justices, they may both eate and drinke, As if any of the Jurors fall sicke befoze they be agreed of their verdit so soze that he may not common of the verdit, then by the assent of the Justices he may haue meate and drinke and also such other things as be necessarie for him and his felloswes also at their owne colks, or at the indifferent colkes of the parties if they so agree, or by the assent of the Justices may both eat & drinke: & therefore if the case happen that thou now speakest of, and that the Jury can in no wise agree in their verdit, and that appeareth to the Justices by examination, the Justices may in that case suffer the to haue both meate and drinke for a time to see whether they will agree, and if they wil in no wise agree, I think that the Justices may set such order in y^e matter as shall seeme to them by their discretion to stand with reason and conscience by awarding of a new enquest & by setting fine vpon the that they shal find in default, or otherwile as they shal think best by their discretion, like as

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as they may do if one of the iury die before verdict, or if any other like casualties fall in that behalf. But what the Justices ought to do in this case that thou hast put by in their discretion, I wil not treat of at this time.

¶ The vij. question of the Doctor whether the colors that be given at the common law in Assises, actions of trespass, and diuers other actions stand with conscience because they be most commonly feigned and be not true,

Cap. 53.

I pray thee let me heare thy mind to what intent such colors be given, & whether they be commonly untrue: how they may stand with conscience? S. The cause why such colours be given in this, there is a Maxim & a ground of the law of Englande, that if the defendant or tenant in any action plede a plee that amounteth to the general issue that he shalbe compelled to take the general issue, and if he wil not, hee shalbe condemned for lack of answer, & the generall issue in assise is, that he that is named the disseisor hath done no wrong nor no disseisin. And in a writ of Entry in the nature of assise the generall issue is, that he disseised him not, and in an action of Trespass that he is not guilty, & to every action hath his generall issue assigned by the lawe, & the tenant must of necessity either take the generall issue, or plede some ple in Abatement of the writ to the invalidation, to the partie, or els some barre or some matter by way of conclusion. And therefore if

That S. infeffe H. Hart of land, and a stranger bringeth an assise against the said H. Hart, for that lād whose title he knoweth not, In this case, if he should be compelled to plede to the point of the assise, that is to say, that he hath done no wrong ne no disseisin, & matter should be put in the mouths of xij. lay men, which bee not learned in the law, & therefore better it is that the law be so ordered, that it be put in the determination of the Judges, then of lay men. And if the said H. Hart in the case before rehearsed, would plede in barre of the Assise that Jo. at Stile was seised and enfeoffed him, by force whereof he entred and asked iudgement, if that Assise should lie against him, that ples were not good, for it amounteth but to the generall issue, & therefore he shalbe compelled to take the general issue, or els the Assise shall be awarded against him for lack of answer. And therfore to the intent the matter may be shewed and pleded before the Judges, rather then before the Jury, the tenants vse to give the plaintife a coloz, that is to say, a colour of action whereby it shall appere that it were hurtful to the tenāt to put that matter that he pledeth to the iudgment of xij. men, & the most common colour that is vsed in such case is this, when he hath pleded that such a man enfeoffed him, as before appeareth, it is vsed that he shal plede farther, & say that the plaintife claiming by a colour of a deed of feoffement made by the said feoffor, before the feoffement made to him, where no right passed by the deed, entred, upon whom he entred and asked Iudgement if
the

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the Wisse lie against him. In this case because it appeareth to bee a doubt to vnlearned men whether the land passe by the deed without it very or not, therefore the law suffereth the tenant to haue that speciall matter to bring the matter to the determination of the Judges. And in such case the Judges may not put the tenant from the ples, for they knewe not as Judges, but that it is true, & so if any default be, it is in the tenant & not in the Court. And though the truth be that there were no such Deede of feoffment made to the plaintife as the tenant pledeth, yet me thinketh there is no default in the tenant, for he doth it to a good intent as befoze appeareth. D. If the tenat know that the feoffor made no such deed of feoffment to the plaintife, then there is a default in the tenant to plede it, for he swittingly saith against the trowth, & it is holden by all Doctors that euerie lye is an offence more or lesse, for if it be of malice, and to the hurt of his neighbor, thē it is called Mendatium perniciosum, and that is deadly sinne. And if it be in sport, and to the hurt of no man, nor of custome vsed, ne of pleasure that he hath in lying, then it is veniall sinne, and is called in latin, mendatium iocosum. And if it be to the profite of his neighbor and to the hurt of no man, then it is also veniall sinne, and is called in latin, mendatium officiosum. And though it be the least of those iij. yet it is a veniall sinne and would be eschewed. S. Though the mydwiues of A Egyt lped when they had reserued the male childzen of the Ebrewes, saying to the king Pharaos, that the

the Hebrewes had women, that were cunning in the same craft, which or they came had reserved the children alive, where in dedde they themselves of pitie and of dread of God reserved them, yet Saint Hierome expounded the text following, which saith that our Lorde therefore gaue them houses, that is to be understood, that he gaue them spirituall houses and that they had therefore eternall rewarde, and if they sinned by that lie, although it were but veniall, yet I cannot see how they shoulde haue therefore eternall reward. And also if a man intending to slea an other, aske me where that man is, is it not better for me to lye and say I cannot tell where hee is, though I knowe it, then to shewe where he is, whereupon murder should followe? D. The dedde that the Midwives of Aegypt did in saving the children, was meritorious and deserved reward everlasting (if they beliened in God) & did good deddes before, as it is to suppose they did, when they for the love of God, refused the death of the Innocents, and then though they made a lye after, which was but venial sinne, that coulde not take from them their reward, for a venial sinne doth not utterly exting charitie, but letteth the fervour thereof, and therefore it may well stande with the wordes of Saint Hierome, that they had for their good deed eternall houses: and yet the lye that they made to be a venial sinne: but neuertheless if such a lie that is of it selfe but venial, be affirmed with an oth, it is alway mortal if he knew it be false that he sweareth. And as to the other

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question it is not like to this question, that we haue in hand as me semeth, for sometime a mā for eschewing of the greater euill may doe a lesse euill, and then the lesse is no offence in him, & so it is in the case that thou hast put, wherein because it is lesse offence to say, he wotteth not where he is, though he know where he is, then it is to shewe where he is, whereupon murther should folloiw, it is therefore no sinne to say he wotteth not where he is, for euerie man is bound to loue his neighbor, and if hee shewe in this case where he is, knowing his death should folloiw thereupon, it semeth that he loued him not, ne that he did not to him as he would be done to, but in the case that we be in shere, there is no such sinne eschewed, for though the partie pleadeth the generall issue, the Jury might find the truth in euery thing, and therefore in that he saith that the plaintiff claiming in by the colour of a deed of feoffment, where nought passed, entred &c. knowing that there was no such feoffment, it was a lie in him and a veniall sinne, as me thinketh. And euery man is bound to suffer a deadly sinne in his neighbour, rather then a veniall sinne in himselfe.

S. Though the Jury vpon a general issue, may finde the truth as thou sayest, yet it is much more dangerous to y^e Jury to inquire of many points thē to enquire only of one point. And forasmuch as our Lord hath giuen a commandement to euery man vpon his neighbor, therfore euery mā is bound to force asmuch as in him is y^e by him no occasiō of offence come to his neigh-

neighbor. And for the same cause, the law hath ordeined diuers maxims & principles, whereby issues in the kings court may be ioined vpon one point in certaine as nigh as may be, & not generally, least offence might follow therupon against God, & a hurt also vnto a Jury, wherefore it seemeth that he loueth not his neighbor as himself, ne that he doth not as he would be don to, that offereth such daunger to his neighbor, where he may wel & conueniently keepe it from him, if he wil follow the order of the law, & it semeth that he putteth himselfe wilfully in iopardy that doth it, & it is written Eccl. 3. Qui amat periculum, in illo peribit, that is to say he that loneth peril, shall perish in it, & he that putteth his neighbor in perill to offend, putteth himselfe in the same, and so should he doe me semeth that would wilfully take the general issue, where he might conueniently haue the special matter, and furthermore it is no offence in princes and rulers to suffer contracts, and buying and selling in markets and faires, though both periury and disceipt wil follow therupon, because such contracts be necessarie for the common wealth, so it semeth likewise, that there is no default in the party that pleadeth such a speciall matter to auoide from his neighbor the daunger of periury, ne yet in the court though they induce him to it, as they do sometime for the intent before rehearsed, and in likewise some wil say, that if rulers of cities & communalities, sometime for the punishment of felons, murderers, & such other offenders wil (to the intent they would haue them to confesse

(Welle the truth) say to them that be suspected,
 that they be informed of such certain defaults,
 or in default in the offenders, & that they
 do to the intent to have them to confesse the
 truth, that though they were not so informed,
 that yet it is no offence to say they were so in-
 formed, because they do it for p̄ comon wealch,
 for if offenders were suffered to go unpunish-
 ed, the common wealch would elsone decay &
 utterly perishe. I will take aduifement vpon thy reason in
 this matter till another seison, & I will now
 aske thee another question somewhat like vnto
 this, I pray thee let me heare thy mind there-
 in. Let me here thy question and I shal with
 god will say as I think therein. The viij. question of the Doctour concerneth
 the pleading in Assise, wherby the tenants
 do so vñe sometime to plede in such maner
 that they shall confesse in p̄sent
 Ouster. Cap. 54.
 This is commonly vñed as I haue heard say
 that when the tenant in Assise pleadeth that
 a straunger was seised and enfeofed him, and
 giueth the plaintife a colour in such maner as
 before appeareth in the xiij. Chapter, that
 the tenant many times when he hath pleaded
 thus, and the plaintife claiming by a colour of
 a deede of feoffement made by the said straun-
 ger, where nought passed by the deede entred,
 and

and that then they vse to say further, vpon
 whom A. B. entred, vpon whom the tenant
 entred, where in deede the said A. B. neuer en-
 tred, ne happely there was neuer no such man:
 How cā this pleding be excused of an vnt ruth,
 and what reasonable cause can be why such a
 pleding should be suffered against the truth.
 S. The cause why that maner of pleding is
 suffred is this. If the tenant by his pleding
 confessed an immediate entry vpon the plain-
 tife, or an immediate putting out of the plain-
 tife, which in french is called an ouster, then if
 the title were after found for the plaintife, the
 tenant by his confession were attainted of the
 disseisin. And because it may be, that though
 the plaintife haue good title to the lande, that
 yet the tenant is no disseisor. Therefore the te-
 nants vse many time to pleder in such maner as
 thou hast said before, to laue themselves from
 confessing of an ouster, & so if there be any de-
 fault, it is not in the Court, ne in the lawe, for
 they know not the truth therein til it be tried,
 and me thinketh also that there is in this case
 right little default or none in the tenant nor in
 his counsell, specially if the counsaile knowe
 that the tenant is no disseisor. But as to that
 point I pray thee that thou as thou hast ta-
 ken a respite to be aduised, or that thou shewe
 thy full mind in the question of a colour giuen
 in iurise, whereof mention is made in the sayd
 fl. viij. Chapter: that I likewise may haue a
 like respite in this case till another time, to be
 aduised, and then I shall with good wil shew
 thee my full mind therein.

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D. I am content it be as thou saist, but I pray thee that I may yet adde an other question to the ij. questions before rehersed of the colours in a life & feele thy mind therein, because that I wondeth much to the same effect that the other do (that is to say) to proue that there bee diuers things suffered in the law to be pleaded that be against the truth, & I pray thee let mee hereafter know thy mind in all thre questions, & thou shalt then with a good wil know mine.

S. I pray thee shewe mee the case that thou speakest of. D. If a man steale an horse secretly in the night, It is vsed that thereupon hee shalbe indicted at the kings suit, and it is vsed that in that Indictment it shall be supposed that hee such a day, and place with force and armes (that is to say) with staves, swords, & knives, &c. feloniously stole the horse against the Kinges peace, & that fourme must be kept in euery Indictment, though the felon had neither sword nor other weapō with him but yhe came secretly wout weapō. How can it therefore be excused, but that therein is an vntruth?

S. It is not alleadged in the Indictment by matter in deede that he had such weapō, for the forme of an Indictment is this.

Inquiratur pro domino Rege, si A. tali die & Anno apud talem locum vi & armis videlicet gladijs &c. talem equum talis hominis cepit &c.

And then if the twelue men be only charged with the effect of the bil, That is to say, whether he be guilty of the felony or not, and not whether he be guilty vnder such manner and forme as the bil specifeth or not, and so when they

they say, *billa vera*, they say true as they take the effect of the bill to be. And therefore if there were false latin in the bill of Indictment, & the Jury saith, *billa vera*, yet their verdict is true, for their verdict stretcheth not to the truth or falsheid of the latin, but to the felony, ne to the forme of the words, but to the effect of the matter, & that is to inquire whether there were any such felony done by the person or not, and though the bill vary from the day, from the yere, and also from the place where the felony was done in, so it vary not from the shire that the felony was done in, and the jury saith, *billa vera*, they haue giuen a true verdict, for they are bound by their othe to giue their verdict according to the effect of the bill and not according to the forme of the bill. And so is he that maketh a vow, bound likewise to that that by the law is the effect of his vow, & not only to the words of his vow. And if a man vow never to eat white meat, yet in time of extreme necessity he may eat white meat, rather than die & not break his vow, though he affirmed it with an othe, for by the effect of his vow, extreme necessity was excepted, though it were not expressly excepted in the words of the vow, and so likewise though the words of the bill be to enquire whether such a man such a day & yere, & in such a place did such a felony, yet the effect of the bill is to enquire whether he did the felony within the shire, or no, & therefore the Justices before whom such Indictments be taken, most commonly enforme the Jury that they are bound to regard the effect of the bill & not the forme.

And therefore there is no vntruth in this case neither in him that made the bil, ne yet in the Jury as me seemeth. D. But if the party that ought the horse bring an action of trespass, and declareth that the defendat took the horse with force and armes, were he tooke him without force and armes, how may the plaintif there be excused of an vntruth. S. And if the plaintif formit an vntruth, what is that to the court or to the law, for they must beleue the plaintif, til that that he saith be denied by the defendant. And yet as this case is, there is no vntruth in the plaintif to say he tooke the horse with force and armes, though he came neuer so secretly and without weapon, for every trespass is in the law done with force & armes, so that if he be arraigned and found guilty of the trespass, he is arraigned of the force and armes: And sith the law adiudged every trespass to be done with force, therefore the plaintif saith truly that he tooke him with force as the law meaneth to be force. For though he tooke the horse as a felon, yet vpon the felonious taking the owner may take an action of trespass if he will, for every felony is a trespass and more. And so I haue shewed thee some part of my minde to proue that in those cases there is no vntruth, neither in the parties, neither in the Jury, nor in the law. Nevertheless, at a better leasure I will shew thee my mind more fully therein with good will as thou hast promised me to do in the cases of colors of the Aulse, and of the ouster, that be before rehearsed.

The viij. question of the Doctor whether the statute of xlv. of Edward the third of Silua cedua, stande with conscience.

Cap. 55.

12.3.

In the xlv. yere of the raigne of Ed. 3. it was enacted, that a prohibition should lye where a man is impleaded in the Court Chyristien, for dismes of wood of the age of xx. yere or above, by the name of Silua cedua, how may that statute stand with conscience that is so directly against the libertie of the Church, and that is made of such things as the Parliament had no authoritie to make any law of? S. It appeareth in the said statute that it is enacted that a Prohibition should lye in that case, as it had used to do before that time, and if the Prohibition lay by a prescription before the statute, why is not then the statute good as a confirmation of that prescription. D. If there were such a prescription before the statute that prescription was void, for it prohibiteth the paiement of tithes of trees of the age of xx. yere or above, and paying of tithes is grounded aswel vpon the law of God, as vpon the law of reason, & against those lawes lyeth no prescription as it is holden most commonly by al men. S. That there was such a prescription before the said statute, & that if a man before y^e said statute had bin sued in the spiritual court for tithes of wood of the age of xx. yere or above the prohibition lay, as

¶.iiij.

appears

appeareth in the said statute, and it cannot be
 thought that a statute that is made by autho-
 rity of the whole realme, as wel of the king &
 of the Lords spiritual & temporal as of all the
 commons, will recite a thing against the truth: &
 furthermore I cannot see how it can be groun-
 ded by the law of God, or by the law of reason
 that the x. part should be paid for tithe & no o-
 ther portion but that, but I thinke that it bee
 grounded vpon the law of reason that a man
 should giue a reasonable portion of his goods
 temporal to them that minister to him things
 spiritual, for every man is bound to honoz God
 of his proper substance, and the giuing of such
 portion hath not bin only vsed among faithful
 people, but also among vnfaithful as it appea-
 reth Gen. 47. where corne was giuen to the
 priests in Egypt of common barns. And S. Paul
 in his Epistles affirmeth y^e same in many pla-
 ces, as in his first Epistle to the Corin. Cap. 9.
 where he saith, he that worketh in the church,
 shal eate of that that belongeth to the church.
 And in his Epistle to the Gala. Cap. 6. he saith,
 Let him that is instructed in spiritual things,
 depart of his goods to him that instructed him.
 And S. Luke cap. 10. saith, That the workman
 is worthy to haue his hire. All which sayings
 may right conueniently be taken and applyed
 to his purpose, that spiritual men which mi-
 nister to the people spiritual things, ought for
 their ministration to haue a competent living
 of them that they minister vnto. But that the
 x. part shoulde be assigned for such a portion
 and neither more nor lesse, I cannot perceiue
 that

that that shoulde be grounde by the lawe of reason, nor immediatly by the law of God: for before the law written there was no certaine portion assigned for the spirituall Ministers, neither the x. part, nor the xij. part, vnto the time of Iacob, for it appeareth Gen. 28. that Iacob answered to pay Dismes which was among the Jewes for the x. part, if our Lord prospered him in his iourney, & if the x. part had bin his duety before that answer, it had bin in vaine to haue answered it, and so it had if it had bin grounde by the law of reason, and as to that is spoken in the Euangelists, & in the new lawe of tithes, it belongeth rather to the giuing of tithes in the time of the olde lawe, then of the new law, as appeareth Mathew 23. and Luke 11. where our Lord speaketh to the Pharises, saying, wo to you Pharises that tithe mints, rue, and herbes, and forget the Iudgement and the charitie of God, these it behoueth you to do and the other not to omit, that is to say, it behoueth you to do Iustice, and charity of God, and not to omit paying of tithes though it be of small thinges as of mints, rue, herbes, and such other. And also that the Pharisey saith Luke 17. I pay my tithes of all that I haue, is it to be referred to the old lawe not to the time of the new lawe. Therefore as I take it that the paying of tithes or of a certain portion to spiritual men for their spiritual ministracion to the people hath bin grounde in diuers maners. first before the law written a certain portion sufficient for the spirituall ministers was due to them by the lawe of nature, which after

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after them that he learned in the law of the
 realme is called the law of reason, & that por-
 tion is due by al lawes, & in the law written,
 the Jewes were bound to giue the x. part to
 their priests aswel by the said auow of Jacob,
 as by the law of God in the old testament cal-
 led the Iudicials. And in the new law the pay-
 yng of the x. part, is by a law that is made by
 the Church. And the reason wherefore the x.
 part was ordeined by the Church to be payed
 for the tithe was this. There is no cause why
 the people of the new law ought to pay lesse to
 the ministers of the new lawe, then the people
 of the old Testament gaue to the ministers of
 the old Testament. For the people of the new
 law be bound to greater things then the peo-
 ple of the old law were, as it appeareth Math.
 5. where it is said: vnles your good woꝝkes a-
 bound aboue the woꝝkes of the Scribes & the
 Pharises, ye may not enter into the kingdome
 of heaue. And the sacrifice of the old law was
 not so honorable as the sacrifice of the newe
 law is: for the sacrifice of the old law was on-
 ly the figure, and the sacrifice of the new law
 is the thing that is figured, that was the sha-
 dow, that is, the truth. And therefore y^e church
 vpon that reasonable consideration ordeyned
 that the x. part should be paid for the sustenance
 of the ministers in the new law, as it was for
 the sustenance of the ministers in the old law,
 & so that law with a cause may be increased or
 diminished to more portion or to lesse as shall be
 necessarie for them. D. It appeareth Gene. 14.
 that Abraham gaue to Melchisedech tithes,
 and

and that is taken to be the x. part & that was long before the law written, & therefore it is to suppose that he did that by the law of God. S. It appeareth not by any scripture that hee did that by the commaundement of God, ne by any reuelation. And therefore it is rather to suppose that he did part of duetie, and part of his owne free will, for in that he gaue the dimes as a reasonable portion for the sustenance of Melchisedech and his ministers, he did it by the commaundement of the law of reason, as before appeareth, but that he gaue the x. part, that was of his free will, and because he thought it sufficient & reasonable, but if he had thought the xij. part or the xij. part had sufficed, hee might haue given it & that with good conscience. And so I suppose that in the new law, the giuing of the x. part is by a law of the Church, & not by the law of God, vnlesse it be take that the law of the church is the law of god, as it is sometime taken to be, but not appropriatly nor immediatly, for that is take appropriatly to be the law of God, that is contained in scripture, that is to say, in the old Testament and in the new. D. It is somewhat dangerous to say that tithes be grounded onely vpon the law of the church, for some men as it is said, say that mas law bindeth not in conscience, & so they might happen to make a boldnesse thereby to deny their tithes. S. I trust there be none of that opinion, and if there be it is great pittie.

And neuerthelesse they may be compelled in that case by the lawe of the Church to paye their tithes aswell as they should be if paying
of

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of tithes were grounded merely vpon the law
of God. D. I thinke wel it be as thou saiest, &
therefore I hold me contented therein. But I
pray thee shew me thy minde in this question,
If a whole countrey prescribe to pay no tithes
for corne or hey, nor such other, whether thou
thinke that that prescription is good. S. That
question depēdeth much vpon that that is said
before, for if paying of the x. part be by the law
of reason or by the law of God, then þ prescription
is void, but if it be by the law of man, the
it is a good prescription so that the ministers
haue a sufficient portion beside. D. John Ger-
son which was a Doctor of diuinity in a trea-
tise that he named Regule[m]orales, saith, that
dismes be paid to priests by the law of God.
S. The wordes that he speaketh there, of the
matter be these, *Solutio decimarum sacerdotibus, est*
de iure diuino quatenus inde sustentent: sed quo tã
hanc vel illam assignare, aut in alios redditus commu-
tare positui iuris existit, That is thus much to say
The paying of dismes to priests, is of the law
of God, that they may therby be sustained, but
to assigne this portion or that, or to chaunge it
to other rents, that is by the law positue, and
if it should be taken that by that word, decima-
rum, which in English is called dismes or tithes
that he ment the x. part, and that that x. part
should be paid for tithes by the law of God, the
is the sentence that followeth after against
that saying, for as it appeareth aboue, the text
saith afterward thus, but to assigne this por-
tion or that or to change it into other rents be-
longeth to the law positue, that is to the law
of

of man, and if the x. part were assigned by God, the may not a lesse part be assigned by the law of man, for that should be contrarie to the law of God, & so it should be void. And me thinketh that it is not likely that so famous a clark would speak any sentence contrary to the law of God, or contrary to that he had spoken before, & to proue he ment not by the terme Decime, that dismes should alway be take for the x. part, it appereth in the iij. part of his works in the 32. title Literæ, where he saith thus, *Non vocatur portio curatis debita propterea decime, eo quod semper sit decima pars, immo est interdum vicesima aut tricesima.* That is to say, the portion due to curates, is not therefore called dismes, for that it is alway the x. part, for sometime it is the xx. or the xxx. part, and so it appeareth that by this word *decimarum*, he ment in the text before rehearsed a certain portion, & not precisely the x. part, and that the portion should be paid to priests by the law of God to sustaine them with, taking as it seemeth the law of reason in that saying, for the law of God as it may one way be well and conueniently taken: because the law of reason is giuen to euery reasonable creature by God. And then it followeth pursuantly that it belongeth to the law of man to assigne this portion or that, as necessity shall require for their sustenance, and then his saying agreeth wel to that that is said before, that is to say, that a certaine portion is due for priests, for their spiritual ministracion by the law of reason. And then it would follow thereupon that if it were ordeined for a law that all
 pay=

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paying of tithes should from henceforth cease,
 & that euery curat should haue assigned to him
 such certain portion of land, rent, or annuity, as
 should be sufficient for him, & for such ministers
 as should be necessary to be vnder him, accor-
 ding to the number of the people there, or that
 euery parishioner or housholder should giue a
 certain of mony to that vse, I suppose the law
 were good, & that was the meaning of J. Ber-
 son as it semeth in his words before rehearsed:
 where he saith, but to chaunge tithes into o-
 ther rēts is by the law positue, that is to say,
 by the law of man. And some thinke that if a
 whole countrey prescribe to be quite of both
 tithes of corne or grasse, so that the spirituall
 ministers haue a sufficient portion beside to
 liue vpon, that is a good prescription & y they
 should not offend, that in such countries paid
 no tithes: for it were hard to say, that all the
 men of Italy, or of the East parties be damp-
 ned because they pay no tithes, but a certaine
 portion after the custome: therefore certain it
 is to pay such a certain portion, as wel they as
 al other be bound, if the church aske it, any cu-
 some notwithstanding. But if the Church
 aske it not, it semeth that by that not asking,
 the church remitteth it, & an example therof we
 may take of the apostel Paul, that though he
 might haue taken his necessary liuing of them
 that he preached to, yet he tooke it not, & neuer-
 theles they that gaue it him not, did not offend,
 because he did not aske it, but if one man in a
 town would prescribe to be discharged of tiths
 of corne & grasse, me thinketh the prescription
 is

and 9 146.
 pucher. v. Cellini
 Rz. 499.
 Rz. 736.
 Jac. 507
 Rz. 507.
 Co. 45.
 Rz. 599.
 1073 603. . .

is not good, vnles he can proue that he recōpē-
 seth it in an other thing: for it semeth not rea-
 sonable that he should pay lesse for his tithes
 then his neighbors do, seing that the spiritual
 ministers are wōd to take as much diligence for
 him, as they be for any other of þ parish, wher-
 fore it might stand with reason y he should be
 cōpelled to pay his tithes as his neighbors do,
 vnles he can proue that he paieþ in recōpence
 therof moze then the x. part in an other thing.
 Neuertheles I leaue þ matter to the iudgmēt
 of other, & then for a further profe though the
 said prescriptiō of not paying tiths for trees of
 xx. yere & aboue, were not good, yet that that of
 corne & grasse should be good, some make this
 reasō: they say y there is no tith but it is either
 a predial tith, or a parsonal tith, or a mixt tith,
 & they say y if a tith shold be paid of trees whē
 they be so sold, y y tith were not a predial tith,
 for the predial tith of trees is of such trees as
 bring forth fruits & encrease yerely, as appoll
 trees, nut trees, peare trees, & such other, wher-
 of y predial tith is the appels, nuts, pearces, &
 such other fruits as come of thē yerely, & whē
 the fruits be tithed, if the owner after sell the
 trees, there is no tith due thereby, for ij. tithes
 may not be paid of one thing, & of those tiths y
 is to say, of predial tithes was þ cōmandement
 given in the old law to the Jewes, as appea-
 reth Leuit. 27. where it is sayd, Omnes decime
 terre, siue de pomis arborum, siue de frugibus, domini
 sunt, & illi sanctificantur, that is to say, al tithes
 of y earth, either of appels of trees or of grains
 be our Lordes, and to him they be sanctified,
 and

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and though the said law speaketh onely of apples, yet it is vnderstood of al maner of fruits. And because it saith that all the tithes of the earth be our lordes, therefore calves, lambs, and such other must also be tithed, and they be called by some men prediall tithes, that is to say, tithes that come of the grounde, howbeit they call them only Predials mediate, and they be the same tithes that in this writing be called mixt tithes, & the other tithes (that is to say) tithes of apples & cozne, & such other be called Predials immediate, for they come immediatly of the ground, and so do not mixt tithes, as evidently appeareth. D. But what thinkest thou shalbe the prediall tithes of alshes, elmes, salowes, alders, and such other trees as beare no fruites, whereof any profit commeth, why shal not the x. part of the selfe thing be the tithe thereof if they be cut downe as well as it is of cozne and grasse? S. For I thinke that there is to that intent great diuersitie betwene cozne, grasse and trees, and that for diuers considerations, whereof one is this. The proprietie of cozne & grasse is not to grow ouer one yere, and if it doo, it wil perish and come to nought, & so the cutting downe of it, is the perfection and preservation thereof, and the special cause that any encrease followeth of the same. And therefore the tenth part of the encrease shalbe paid as a predial tithe, and there no deduction shal be made for the charges of it, and so it is of sheepe and beastes that must be taken and killed in time, for els they may perish and come to naught: but when trees be felled, that felling

is not the perfection of the trees, ne it causeth not them to increase but to decay, For most commonly the trees would bee better if they might grow still. And therfore vpon that that is the cause of the decay & destruction of them it semeth there can no predial tithe rise, & some me say that this was the cause why our Lord in the said Chapter of Levitic. xxvij. gaue no commandement to tithe the trees, but the fruits of the trees onely. D. It appeareth in Paralap. xxxj. that the Jewes in the time of the king Ezechias offred in the Temple all things that the ground brought forth, and that was trees as well as corne and grasse. S. It appeareth not that they did that by the commandement of God, and therfore it is like that they did it of their own deuotion and of a fauour that they had aboue their dutie to the repairing of the Temple, which the king Ezechias had the commaunded to be repaired, And so that text pro- ueth nothing that tithe shoulde bee payed for trees: And therfore they say farther, that truth it is, that if a man to the intent he would pay no tithe? would wilfully suffer his corne and grasse to stand still and to perishe, he shoulde offend conscience thereby: but though he suffer his trees to stand still continually without fel- ling, because he thinketh a tithe would be as- ked if he felled them (so that he do it not of an euill will of the Curate) he offendeth not in conscience, ne he is not bounde to restitution therfore, as he shoulde be if it were of corne & grasse, as befoze appeareth: And another diuer- sitie is this, In this case of tithe wood, that

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tithe thereof would serue so litle to that purpose that tithes be paid for, that it is not likely that they that made the law for payment of tithes intended that any tithe should be paid for trees or wood, For the spiritual ministers must of necessitie spend daily and weekly, and therefore the tithes of trees or wood that cometh so seldome would serue so litle to the purpose that it should be paid for, yet it would not helpe them in their necessitie, So that if they should be driuen to trust thereto, though it might help him in whose time it should happen to fall, yet it should deceaue them that trusted to it in the meane time, and also shoulde leaue the parish without any to Minister to them. D. I would wel agree that for trees that beare fruit there should no prediall tith be paid when they be sold (for the prediall tithe of the is the fruites that come of them) and so there cannot be two predials of one thing, as thou hast said, But of other trees that beare no fruit, me thinketh that a prediall tithe shoulde be payd when they be sold, and so it appeareth that there ought to be by the constitution provinciall made by the reuerend Father in God Robert V Vinchellie late Archbishop of Canturburie, where it is said and declared, that Silva cedua is of every kind of trees that haue being, in that that they should be cut, or that be able to be cut, whereof we will, saith he, that the possessor of the said woods be compelled by the censures of the Church to pay to the Parishes Church, or mother Church, the tith as a reall or prediall tithe, And so by vertue of that constitution

stitution prouinciall a predial tith must be paid of such trees as haue no fruit, For I woulde wel agree that the said constitution prouincial stretched not to trees þ beare fruit as though the words be general for al trees (as before appeared.) S. I take not the reason why a predial tith should not be paid for trees that beare fruit to be, because two prediall tithes cannot be paid for one thing: for when the tith is paid of Lambes, yet shall tithe be paid of wooll of the same sheepe (for it is paid for another increase) and so it might be said that the fruit of a tree is one increase, and the felling another, But I take the cause to be for the two causes before rehearsed, & also forasmuch as the felling is not properly an increase of the trees but a destruction of the trees, as it is said before. And farther I would heare thy mind vpon the said constitution prouincial, which wil, that tithe should be paid for trees by the possessors of the wood, that if the possessor sell the wood for C. li. & giue the buyer a certain time to sell it in, what tithe shall the possessor pay as long as the wood standeth? D. I thinke none, for the predial tithe commeth not till the wood be felled and a personall tithe he cannot pay, no more then if a man plucke downe his house and selleth it, or if he sell al his land, in which cases I agree well he shall paie no tithe neither parsonall nor predial. S. And then I put case that the buier selleth the wood againe as it is standing vpon the ground to another for CC. li. what tithe shall be paid then? D. Then the first byer shall pay tithe of the surpluse that

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he taketh over the C. It that he paid as a Parsonall Tithe. S. And then if the second buyer after that cut it downe and sell it when it is cut downe for lesse then he paid, what tithe shall then be paid?

D. Then shall he that selleth them pay the tithe for the trees as a prediall tithe. S. I cannot see how that can be, for he neither hath the trees, that the prediall tithe should be paid for, if any ought to be paid, nor he is not possessor of the ground where the trees grow: And therefore if any prediall tithe should be paid, it should be paid either by the first possessor by reason of the wordes of the said constitution provincial, which be, that the tithe shall be paid by the possessor of the wood, or by the last buyer, because he hath the trees that should be tithed, and by the first possessor the tithe cannot be paid as a prediall, for he cut not them downe, ne they were not cut downe upon his bargain, and by the last buyer it cannot be paid nether as a prediall tithe, for the said constitution saith, that the possessor of the woods should be compelled to paie it. And therefore I suppose that the trouth is, that in that case no tithe shall be paid, for as to the last seller, he shall pay no parsonall tithe, for he gained nothing, as it appeareth before, and no prediall tithe shall be paid, for it should be against the said prescription, and also the cutting downe is the destruction of trees and not their preservation, as is said before.

D. Then takest thou the said constitution to be of smal effect, as it seemeth. S. I take it to be of

of this effect, that of wood aboue twenty pere it bindeth not, because it is contrary to the common law, and to the said prescription, that standeth good in the common law: but of wood vnder xx. pere whereof tithe hath bin accustomed to be payd, the constitution is not against the sayd prescription, because paying of tithe vnder xx. pere is not prohibite, but suffered by the said statute: howbeit some say, that by the verie rigor of the common law tithes should not be paid for wood vnder xx. pere, no more then for aboue xx. pere, and that Prohibition in that case lyeth by the common law, Nevertheless, because it hath bin suffered to the contrary, and that in many places tithe hath bin paid thereof, I passe it ouer, but where tith hath not ben paid of wood vnder xx. pere, I thinke none ought to be paid at this day in law nor conscience: But admit, that the sayd constitution taketh effect for payment of the wood vnder xx. peres as of a prediall tithe, yet I cannot see how the tithe thereof should be payde by the possessor of the wood, if he sell them, but that it should be paid rather by him that haue the trees, for the constitution is, that the tithe shal be paid as a reall or a prediall tithe, and that is the x. part of the same trees, as it is of Corne. And if a man bye corne vpon the grounde the buyer shall pay the tithe and not the seller, and so it should seeme to be here, and what the constitution ment to decree the contrarie in tithe wood, I cannot tell, vnlesse the meaning were to enduce the owners to pay tithes of great trees when they sell them to their owne vse:

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Which me thinketh shoulde be very harde to stand with reason, though the said statute had neuer bin made, as I haue said before. And furthermore I woulde here (vnder correction) moue one thing, & that is this, That as it seemeth that they that were at the making of the said constitution knewe the said prescription did not follow the direct order of charity therein so perfectly as they might haue done, For when they made the said constitution prouincial directly against the said prescription, they set law against custome, and power against power, and in maner the spiritualtie against the temporaltie, wherby they might wel know that great variance & suit shoulde follow, And therefore if they had clerely scene that the said prescription had bin against conscience they shoulde first haue moued the king and his counsell & the nobles of the realme to haue assented to the reformation of that prescription, & not to make a law as it were by authority & power against the prescription, & then to threate the people & make them beleue that they were all accursed that kept the said prescription or maintained it. And it semeth to stand hardly with conscience to report so many to stand accursed for following of the said statute and of the said prescription as there do, and yet to do no more then hath be done to bring them out of it. D. He thinketh that it is not convenient that lay men should argue the lawes & the decrees or constitutions of the Church, and therefore it were better for the to giue credence to spirituall rulers y haue cure of their soules then

then to trust to their owne opinions, and if they would do so, then such matters would much the more rather cesse then they will go by such reasonings, S. In that that belongeth to the articles of the faith, I thinke the people be bound to beleue the Church, for the Church gathered together in the holy ghost cannot erre in such thinges as belong to the Catholicke faith, But where the church maketh any lawes whereby the goods or possessions of the people may be bound, or by this occasion or that may be taken from them, there the people may lawfully reason whether the lawes bindeth them or not, for in such lawes the Church may erre and be deceiued, and deceiue other, either for singularity, or for couetice or some other cause and for that consideration it pertaineth most to them that be learned in the law of the Realme to knowe such lawes of the Church, as treat of the ordering of lands or goods & to see whether they may stand with the lawes of the realme or not, And therefore it is necessary for them to knowe the lawes of the Church that treat of Wills, of executors, of testaments, of legacies, bastardie, matrimony, and diuers other, wherein they be bound to know when the law of the Church must be folloved, and when the law of the realme, wherof because it is not our purpose to treat, I leaue to speak any more at this time, and will resort againe to speake of Tithes, wherein some men say that of Tinne, Cole and Lead, no tith shoulde be paid when they be sold by the owner of the ground, because it is part of the inheritance,

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and it is moze rather a destruction of the inheritance then an encrease, And therefore they say, that if a man take a Tinne worke, & giue the Lord the tenth dishe according to the custome that the Lord shall pay no tithe of that tenth dish neither predial nor parsonal, but if the other that taketh the worke haue gaines & aduantage by the worke, it seemeth that it were not against reason that he should pay a parsonall tithe of his gaines, the charge deducted.

D. I pray thes shew me first what thou takest for a parsonal tithe, and vpon what grounde parsonal tiths be paid as thou thinkest so that one of vs mistake not another therein. S. I wil with good wil and therefore thou shalt vnderstand that as I take it, personal tithes be not paid for an encrease of the grounde, but for such profit as cometh by the labour or industrie of the Person, as by buying and selling and such other, and such parsonal tiths, as I take it, must be ordered after the custome, and the church hath nat vsed to leuie those tithes of compulsion, but by conscience of the parties: Neuertheles Raymond saith that it is good to pay parsonall tithes, or with the assent of the parson, to distribute them to poore me, or els to pay a certain portion for the whole. But as Innocent saith, where the custome is, that they should be payed, the people be bound to paye them aswell as predials, the expences deduct. Nowbeit in the Church of England they vse to leue for such parsonall tithes aswell as for predials, and that is by reason of the constitution provincial that was made by Robert VVinchelsie

chellie, By the which it was ordained that parsonall tithes should be paid of crafts and Marchandise, and of the lucre of buying and selling, and in likewise of Carpenters, Smiths Weavers, Halons, and all other that worke for hire, that they shall pay tithes of their hire except they will giue any thing certaine to the ble, or to the light of the Church, if it so please the Parson, And in an other place the sayde Archbischoppe saith that of the paxnage of woodes, and such other thinges &c. and of fishinges, trees, bees, doves, and of diuers other thinges there remembred, and of crafts, and of buying and selling of the profits of diuers other thinges there recited, euery man shoulde helpe satisfie competently to the Church, to the which they be bounde to giue it of ryght, no expences by the giuing of the said tithes deducted or withholden, but onely for the payement of tithes of craftes and of buying & selling: And by reason of the said constitutions prouincials sometimes suites bee taken in the Spirituall court for parsonall tithes, and thereof many men do maruaile, because deductions many times must be referred to the conscience of the parties. And they maruaile also why a Law should be made in this Realme for paying of Parsonall tithes, more then there is in other Countries. And here I would gladly moue thee farther in one thing concerning such parsonall tithes to know thy mind therein, and that is, If a man giue to another a horse, and he selleth that horse for a certaine summe, shall he pay any tithe of that summe?

D.

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D. What thinkest thou therein? **S.** I thinke
 . that he shal pay no tithe, for there as I take
 it the profit commeth not to him by his owne
 industry but by the gift of another, and as I
 .. take it, personall tithes be not paid for euerie
 profit or aduantage that commeth newly to a
 man, except it come by his owne industrie or
 labour, and so it doth not here. And also if he
 should pay tithe of that he solde the horse for,
 he should pay tithe for the very whole value of
 . the thing. And as I take it, the parsonal tithes
 for buying and selling shall neuer be paid for
 the value of the thing, but for the clere gaines
 of the thing, And therefore I take the cases
 before rehearsed, where a man selleth his land
 or pulleth down a house, and selleth the stuffe,
 that he should there pay no tith, that it is there
 to be vnderstood that he hath that land or house
 . by gift or by discent, for if a man buy land, or
 buy timber and stuffe of a house and sell it for
 a gaine, I suppose that he should pay a parso-
 . nall tithe for that gaine, and this case is not
 . like to a fee or annuitie graunted for counsaile,
 where the whole fee shalbe tithed for the char-
 ges deducted or some certaine summe for it by
 agreement, for there the whole fee commeth for
 his counsaile, which is by his own industrie.
 But in the other case it is not so, and the same
 reason as for the parsonal tithe might be made
 of trees, when they discend or be giuen to any
 man and he selleth them to another, that he
 shall pay no parsonall tithe. **D.** He thinketh
 that if the horse amende in his keeping, & then
 he sell the horse, that then the tithe shalbe paid
 of

of that, that the horse hath encreased in value after the gift, and so it may be of trees that he shall paie tithe of that, that the trees may be amended after the gift or discent. S. Then the tithe must be the x. part of the encrease the expenses deducted, and then of trees the charges must also be deducted, for it is then a Parsonall tithe, and there is no tree that is so much worth as it hath hurt the ground by the growing: therefore there canno parsonal tithe be payd by the owner of the ground when he selleth them though they haue encreased in this time. Neuerthelesse I will speake no farther of that matter at this time, but will shew thee, that if Tinne, Lead, Cole, or trees be sold, that a mixt tithe cannot grow thereby, for a mixt tithe is properly of Values, Lambes, Digges, and such other that come part of the ground that they be fedde of, and part of the keeping, industrie and ouersight of the owners, as it is said befoze, but Tinne, Leade, and Cole are part of the ground and of the freeholde, & trees grow of themselfe, and be also annexed to the freehold, and wil grow of themselfe, and also the mixt tithe must be payd yerely at certaine times appointed by the lawe or by custome of the country, but it may happen that Tinne, lead, cole, & trees, shal not be felled nor takē in many yeres, & so it semeth it cannot be any mixt tithes, & these be some of the reasons, which they that would maintain y^e statut & prescription to be good, mak to proue their intēt as they think. D. What think they, if a mā sel the lops of his wood, whether any tith ought there to be paid: S.

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1. S. They thinke all one lawe of the trees and of the loppes. D. And if he vse to fell the lops once in xij. or xvj. yere, what holde they then?
- S. That all is one. D. And what is the reason why tithes ought not be paid there as well as for wood vnder xx. yere? S. For they say that the loppes are to be taken of the same condition as the trees be what time loeuer they be felled, and that no custome wil serue in that case against the statute, no more then it should do of great trees. D. And what hold they of the barke of the trees? S. Therein I haue not heard their opinions, but it seemeth to be one lawe with the loppes. D. I perceiue well by that thou hast said before, that thy minde
- .. is that if a whole Countrey prescribe to be quite of tithes of trees, corne and grasse, or of any other tithes, that that prescription is good, so that the spirituall ministers haue sufficient beside to liue vpon, dost thou not meane so? S. Yes verely. D. And then I would know thy minde if any man contrarie to that prescription were sued in the Spirituall Court for corne and grasse, or any other tithes, whether a prohibition should lye in that case, as it did after thy minde before the sayd statute, where a man was sued in the Spirituall Court for tithes wood?
- S. I think nay. D. And why not there, as well as it did where a man was sued for the tithes wood? S. For as I take it, there is great diuersitie betweene the cases, and that for this
- .. cause, There is a Maxime in the law of England that if any suit be taken in the Spirituall court,

court, whereby any goods or landes might bee reconered, which after the grounds of the law of the Realme ought not to bee sued, there though percase the kings Court shall hold no plee thereof, that yet a Prohibition should lye, and after when it had continued long that no tithes were paid of wood, because of the said prohibition, and that after by procelle of time some Curates began to aske tithes of wood, contrarie to the lawe and contrarie to the said prescription, so that variance began to rise between curates and their parishners in that behalfe, then for appealing of the said variance the said statute was made, and that as it seemeth more at the calling on of the spiritualtie then of the temporaltie, for the statute doth not expressely graunt that the Prohibition in that case of tithes wood shoulde lye so largely as some say it lay by the lawe: Nowbeit, it doth not restraine the common lawe therein as it appeareth evidently by the words of the statute, and so after some men it appeared before the statute, and also after the statute (as I haue touched before) that the spiritual court ought not in that case to haue made any procelle for tithes wood: and therefore if they did a Prohibition lay by the common law. And like law is if the spiritual court make protes vpon such a legacy as by the law of the Realme is void. As if a man bequeth to one another mans horse, & the spiritual court thereupon maketh procelle to execute that legacy, there a Prohibition lieth, for it appeareth evidently in the libell, if all the truth appeare in the libell that
in

- in the law of the realme the legacy is bolde to all intents, And that he to whom the legacie is made, shal neither haue the horse nor the value of the horse. And in likewise if a man sell his land for C. li. & he is sued after in the spiritual court for tith of the said C. li. There a
- Prohibition shal lie, for it appeareth in that case openly in the libel, that no tith ought to be paid and that the Spiritual law ought not in that case to make any processe whereby the goods of him that sold the land might be taken from him against the Lawe of the Realme. And vpon this ground it is, that if a man were sued in the Spiritual court, now with the statute for a Mortuarie, that a Prohibition should lie, for it ap-
- peareth in the libell, that with the statute there ought no suit to be taken for mortuaries, And
- the same law is, if any suit were taken in the spiritual court for a new duetie that is of late taken in some places vpon leases of parsonages and vicarages, which is called a Dimission noble, for it appeareth evidently in the libell if any be made thereupon, that no such processe ought by the law of the Realme to be made in that behalfe. But in the case of tithe corne or grasse, or such other things, wherein thou hast desired to know my mnd, there appeareth nothing in the libell but that the suit thereof of right appertaineth to the Spiritual law, and so for any thinge that appeareth, the partie may be holpen in the Spirituall court by the prescription, And if the case were so farre put that in the Spiritual court they would not allowe the said prescription, yet I thinke no

prohibition should lye, For though the spirituall iudges in a spiritual matter deny p parties of Justice, yet the kings lawes cannot reforme that, but must remit it to their conscience. But if there were some remedy provided in that case, it were wel done, For some men say that in the spiritual court they will admit no plee against tithes. And also if a composition were made by assent of the patron & also of the Ordinary betweene a Parson & one of his parishners, that the Parson & his successours should haue for a certain ground so many quarters of cozne for his tith verely, & after contrarie to the composition the Parson in the spiritual court asketh the tithes as they sal, that in this case no Prohibitiō should lye, ne yet though the case were further put that the composition were pleded in the court and were disallowed, but all resteth in the conscience of the Judge spiritual (as is said befoze) Howbeit because some be of opinion that a Prohibition should lye in this last case, therefore I will referre it to the iudgment of other: But in the case of prescription, befoze rehearsed, I take it for p clearer case, that no prohibition shal lie as I haue said befoze. And I beseeche our Lord that this matter & such other like therto, may be so charitably looked vpon that there be not hereafter such diuisions ne such diuersities of opinions therein, as hath bin in time past, wherby hath folloved great costes and charges to manye persons in this Realme, And that hath moued mee to speake so farre in this Chapter, and in diuers other Chapters of this present booke

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- in the law of the realme the legacy is bolde to all intents, And that he to whom the legacie is made, shal neither haue the horse nor the value of the horse. And in likewise if a man sell his land for C. li. & he is sued after in the spiritual court for tith of the said C. li. There a Prohibition shal lie, for it appeareth in that case openly in the libel, that no tith ought to be paid and that the Spiritual law ought not in that case to make any processe whereby the goods of him that sold the land might be taken fro him against the Lawe of the Realme. And vpon this ground it is, that if a man were sued in the Spiritual court, now with the statute for a Mortuarie, that a Prohibition should lie, for it appeareth in the libell, that with the statute there ought no suit to be taken for mortuaries, And the same law is, if any suit were taken in the spiritual court for a new duetie that is of late taken in some places vpon leases of parsonages and vicarages, which is called a Dimission noble, for it appeareth evidently in the libell if any be made thereupon, that no such processe ought by the law of the Realme to be made in that behalfe. But in the case of tithe corne or grasse, or such other things, wherein thou hast desired to know my mnd, there appeareth nothing in the libell but that the suit thereof of right appertaineth to the Spiritual law, and so for any thinge that appeareth, the partie may be holpen in the Spirituall court by the prescription, And if the case were so farre put that in the Spirituali court they would not allowe the said prescription, yet I thinke no
- pro=

prohibition should lye, For though the spirituall iudges in a spiritual matter deny p parties of Justice, yet the kings laws cannot reforme that, but must remit it to their conscience. But if there were some remedy prouided in that case, it were wel done, For some men say that in the spiritual court they will admit no plee against tithes. And also if a composition were made by assent of the patron & also of the Ordinary betweene a Parson & one of his parishners, that the Parson & his successours should haue for a certain ground so many quarters of cozne for his tith verely, & after contrarie to the composition the Parson in the spiritual court asketh the tithes as they sal, that in this case no Prohibition should lye, ne yet though the case were further put that the composition were pleded in the court and were disallowed, but all resteth in the conscience of the Iudge spiritual (as is said befoze) Howbeit because some be of opinion that a Prohibition should lye in this last case, therefore I will referre it to the iudgment of other: But in the case of prescription, befoze rehearsed, I take it for p clearer case, that no prohibition shal lie as I haue said befoze. And I beseeche our Lord that this matter & such other like therto, may be so charitably looked vpon that there be not hereafter such diuisions ne such diuersities of opinions therein, as hath bin in time past, wherby hath folloved great costes and charges to manye persons in this Realme, And that hath moued mee to speake so farre in this Chapter, and in diuers other Chapters of this present booke

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booke as I haue done, Not intending thereby
 to giue occasion to any parson to withold his
 tithes that of right ought to be paid, ne to al-
 ter the portion therein-befoze accustomed, but
 that (as me thinketh) they ought to be claimed
 by the same title as they ought to be paid, and
 by none other. And that it may also somewhat
 appeare that the said statute of 45. Ed. 3. was
 well and lawfully made & vpon a good reason-
 able consideration, & that the said prescriptiō
 is good also, so that no man was in any daun-
 ger of Excommunication for the making of the
 said statute, nor yet is not for the obseruinge
 thereof, ne yet of the said prescription as it is
 noted by some persons that there should be.
 And thus I commit thee vnto our Lord, who
 euer haue both thee and me in his blessed kee-
 ping everlastingly. Amen.



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The 7. question of the student if a man that by way of distres commeth to his debt, but he ought not to haue distreined for it, what restitution he is bound to make. 8

For what thing a man may lawfully distreine 9

The 8. question of the student whether executors be bound in conscience to make restitution for a Trespas done by the testator, & whether they be bound to pay debts vpon a contract first, or make the said restitution 10

The 9. question of the student, whether he that hath goods deliuered him by force of a legacy is bounde in conscience to pay a debt vpon a contract that the testator ought if the executors haue no other goods in their hands. 11

The 10. question of the student if a man haue issue ij. sonnes and died seised of certain lands in fee, the eldest dieth without issue, the yongest recouereth by assise of Mortdacester the land, with damages from the death of the father, whether there he be bound in conscience to pay the damages to the executors of the eldest brother for the time he liued 12

Z. ij.

The

bastard

chancery

feoffe in trust

distres

purgarion

executory

Legacy & contract

Damages ex. fur.

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The xi. question of the student what damages the tenant in dower shal recouer in conscience where her husband died not seised, but she demanded her dower and was denied. 13

The xij. question of the student if a man knowing another to haue right to his land causeth a fine with proclamation to be leuied according to the statut & he that hath right maketh no claime within v. yeres, whether he be barred in cōsciēce as he is in the law 14

The xiiij. question of the student if a man that hath had a child by his wife do that in him is to haue possession of his wifes lands, & she dieth or he can haue it, whether in conscience he shal be tenant by the curtesie. 15

The xiiij. question of the student, if the grauntor of a rent enscoffe the grauntee of the rent of part of the lands &c. whether the whole rent be extinct in conscience, as it is in the law. 16

The xv. question of the student if he that hath a rent out of two acres be named in a recovery of the one acre he not knowing therof &c. whether his whole rent be extinct in conscience &c. 17

The xvj. question of the student, if a man haue a villain for terme of life, & the villain purchaseth lands in fee & he that hath the villain entreth, whether he may wvith conscience keepe the lands to him and to his heires as he may by the law. 18

The xvij. question of the student, If a man in the case next before enforme him that is in the reuerfion of the villain, that after the death of the villain he hath right to the land & counsaileth him to enter whereupon great suit & charges follow, what danger that is to him that gaue the counsel. 19

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- Z.iiij. How

Condition al

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Samay f/tem

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conuict d/le h

*pa hors van
le eury Col
n*

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